MINUTES OF CONVOCATION

Friday, 26th March, 1999
9:00 a.m.

PRESENT:

The Treasurer (Harvey T. Strosberg, Q.C.), Aaron, Adams, Armstrong, Arnup, Backhouse, Banack, Bobesich, Carey, Carpenter-Gunn, Carter, R. Cass, Chahbar, Cole, Copeland, Cronk, Crowe, Curtis, DelZotto, Eberts, Elliott, Epstein, Farquharson, Feinstein, Finkelstein, Furlong, Goodman, Gottlieb, Jarvis, Keenan, Krishna, Lamont, Lawrence, Legge, MacKenzie, Manes, Millar, Murphy, Murray, O'Brien, Ortved, Puccini, Robins, Ross, Ruby, Scott, Stomp, Swaye, Topp, Wilson and Wright.

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The reporter was sworn.

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IN PUBLIC

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REPORT OF THE ACTING DIRECTOR OF EDUCATION

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The Acting Director of Education asks leave to report:

B.
ADMINISTRATION

B.1. CALL TO THE BAR AND CERTIFICATE OF FITNESS

B.1.1. (a) Bar Admission Course

B.1.2. The following candidates have completed successfully the Bar Admission Course, filed the necessary documents, paid the required fee, and now apply to be called to the Bar and to be granted a Certificate of Fitness at Convocation on Friday, March 26th, 1999:

Arik Auerbach	Bar Admission Course
George Herbert Cowley	Bar Admission Course
Nehaben Desai	Bar Admission Course
Enzo Michele Di Gioia	Bar Admission Course
Charisse Anne Ducharme	Bar Admission Course
Jacqueline Paula Famulak	Bar Admission Course
Mark John Gendron	Bar Admission Course

Azaz Khan Juman	Bar Admission Course
Pomy Stephen Kim	Bar Admission Course
Barbara Anne MacFarlane	Bar Admission Course
Karen Ruth Golden Mandel	Bar Admission Course
Neil Parvaiz Nawaz	Bar Admission Course
Gregory Stephen Neinstein	Bar Admission Course
Robert Dawson Sinclair	Bar Admission Course
Lara Marie Speirs	Bar Admission Course
Eric Michael Wolfman	Bar Admission Course

B.1.3. (b) Transfer from another Province - Section 4

B.1.4. The following candidate has completed successfully the Transfer Examination or Phase Three of the Bar Admission Course, filed the necessary documents, paid the required fee, and now applies to be called to the Bar and to be granted a Certificate of Fitness at Convocation on Friday, March 26th, 1999:

Denyse Virginia Kyle	Province of New Brunswick

ALL OF WHICH is respectfully submitted

DATED this the 26th day of March, 1999

It was moved by Mr. Topp, seconded by Mr. MacKenzie that the Report of the Acting Director of Education be adopted.

Carried

THE REPORT WAS ADOPTED

CALL TO THE BAR

The following candidates listed in the Report of the Acting Director of Education were presented to the Treasurer and Convocation and were called to the Bar and the degree of Barrister-at-law was conferred upon each of them. They were then presented by Mr. Lamont to Mr. Justice Gerald F. Day to sign the Rolls and take the necessary oaths.

Arik Auerbach	Bar Admission Course
George Herbert Cowley	Bar Admission Course
Nehaben Desai	Bar Admission Course
Enzo Michele Di Gioia	Bar Admission Course
Charisse Anne Ducharme	Bar Admission Course
Jacqueline Paula Famulak	Bar Admission Course
Mark John Gendron	Bar Admission Course
Azaz Khan Juman	Bar Admission Course
Pomy Stephen Kim	Bar Admission Course
Barbara Anne MacFarlane	Bar Admission Course
Karen Ruth Golden Mandel	Bar Admission Course
Neil Parvaiz Nawaz	Bar Admission Course

Gregory Stephen Neinstein	Bar Admission Course
Robert Dawson Sinclair	Bar Admission Course
Lara Marie Speirs	Bar Admission Course
Eric Michael Wolfman	Bar Admission Course
Denyse Virginia Kyle	Transfer, Province of New Brunswick

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IN CAMERA

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IN PUBLIC

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REPORT OF THE LAWYERS' PROFESSIONAL INDEMNITY COMPANY

Mr. Murray presented the Report of the Lawyers' Professional Indemnity Company and advised that the deficit had now been eliminated.

Report to Convocation

March 1999

By Ross Murray
Chair
Lawyers' Professional Indemnity Company

Report on LPIC and Insurance Operations
March 1999

When Convocation adopted the recommendations of the Insurance Task Force in the fall of 1994, it established a new mandate for LPIC and the Law Society's insurance program. Fundamental to that mandate was the need to generate the $203 million required to retire the deficit that had been run-up in the Errors and Omissions Program and capitalize LPIC.

I am pleased to report that the deficit has now been eliminated and LPIC is fully capitalized. However, before we close the book on the insurance crisis, it is important to review the principal recommendations made in 1994 and report on their implementation. As well, I would like to highlight the 1998 financial results of LPIC and the errors and omissions fund.

TASK FORCE RECOMMENDATIONS

- LPIC will be operated in a commercially reasonable manner

To do so, the infrastructure of LPIC needed to be established. New staff were hired, computer systems were installed, and data accumulated and analyzed. LPIC has averaged a 13% return on equity for the past four years, a rate of return consistent with the insurance marketplace. The $21 million of net income generated since 1994 was the key factor in enabling the discontinuance of the capital levy after only 2 1/2 years, rather than the four years originally estimated.

- LPIC must limit some coverage and eliminate other coverage

LPIC no longer accepts third party claims and has excluded mortgage brokering activities from coverage. As well the innocent partner coverage limits have been reduced and runoff coverage is no longer provided free of charge. LPIC now offers optional coverage for those members wishing to augment the compulsory program at rates competitive with the commercial market.

- LPIC will move toward a system in which the cost of insurance generally reflects risks

LPIC has introduced various premium discounts over the last four years so as to gradually change the underwriting to reflect the risk of claims. Discounts are provided to lawyers who restricted their practice to criminal and/or immigration law; to new practitioners and part-time practitioners. As well, lawyers can reduce their premiums through a choice of deductibles and through early payment discounts. Surcharges are added for claims experience and for non-completion of the insurance application form.

In 1999 LPIC completed the alignment of risk and premiums. The real estate and civil litigation transaction surcharges are now applied to offset the premium, which would otherwise have to be collected from the riskier areas of practice. Real estate and civil litigation have together accounted for 64% of claims costs. By using the transaction levies significant hardship and dislocation have been avoided.

A full 30% of practitioners now enjoy a premium discount, in keeping with the lower risks associated with their area of practice, years in practice, or part-time status. The base premium in 1999 is now $3,650, compared to $5,600 in 1995, while those lawyers with discounts pay premiums as low as $1,666.

- LPIC's mandate will be to settle claims fairly and expeditiously

The profession had little confidence in LPIC's claims management in 1994. An effective claims strategy is central to an insurance company's credibility. LPIC has made major strides in improving its claims operation to the point that it's now viewed as highly competent and effective operation by the commercial reinsurers who participate in the current program.

The key tenet of the strategy is to get involved as early as possible in the claim. The emphasis is on assessing the merits of the claim so that early resolution can be achieved with a minimum of cost and inconvenience to the insured lawyer. In 1998 34% of claims reported were resolved by LPIC's claims examiners without indemnity or third party expenditure.

This streamlining has allowed LPIC to significantly reduce claims handling costs. Since 1994, adjuster fee payments have declined by 90% from $4.5 million per year to $0.5 million; legal fees have similarly dropped by $7 million per annum or 25%, and indemnity payments are down $15 million per annum or 18.5% from 1995. At the same time, LPIC aggressively defends those claims that can only be resolved at trial, and has had considerable success with those files it takes to trial.

LPIC measures the reactions and experiences of the lawyers who have reported claims over the last four years. Today, fully 92% of lawyers who have reported a claim say they are satisfied with the claims service provided by LPIC.

- LPIC may deny coverage in appropriate circumstances or cancel coverage if deductibles, surcharges, premiums or levies are not paid

A concentrated effort has been made to allow lawyers to customize their insurance protection and how they settle their premium accounts. In addition to the premium discounts, there are monthly payment plans with a choice of pre-authorized payment either directly from the lawyer's bank account or major credit card. Savings made in streamlining the program have been passed back to the members, as reflected in discounts for electronic filing of insurance applications, and lump-sum payments.

In the last year less than 60 lawyers have remained suspended for non-payment of their errors and omissions premiums. LPIC attempts to accommodate those lawyers who are having difficulty meeting their financial obligations and makes repeated attempts to contact those members who are delinquent in payment of their levy obligations. LPIC's records indicate that the practicing bar has continued to grow by approximately 3% per annum.

SUMMARY OF 1998 FINANCIAL RESULTS

There follows a summary of some of the important information contained in the financial statements presented by LPIC to the Finance Committee. For full details please refer to the Finance Committee's report.

Highlights

Combined Errors and Omissions Program

• Assets under management:	$392.2 million
• Levies collected 1998:	
Premiums-	79.3 million
Volume, transaction and claims history surcharges-	$ 40.3 million

LPIC

• Net income:	$ 5.6 million
• Capital:	$53.4 million
• Number of practitioners insured at December 31, 1998:	17,317
• Number of practitioners receiving premium discounts at December 31,1998(new, part-time or restricted area of practice):	5,146
• Number of TitlePLUS subscribers:	1,011
• Number of open claims: (1994-6,681)	3,430
• Number of claims received in 1998:	2,109
• Number of claims closed in 1998:	2,193

THE REPORT WAS RECEIVED

MOTION - DRAFT MINUTES OF CONVOCATION

It was moved by Mr. MacKenzie, seconded by Mr. Carter that the Draft Minutes of Convocation for February 19th, 1999 be adopted.

Carried

Rules of Professional Conduct

Mr. MacKenzie briefed Convocation on the proposed changes to the Rules of Professional Conduct which would be coming to Convocation in April.

MOTION - APPOINTMENTS

It was moved by Mr. Carter, seconded by Mr. MacKenzie that Bob Aaron, Nancy Backhouse, Vern Krishna and Heather Ross be appointed to the Law Society Medal Committee.

Carried

REPORT OF THE TASK FORCE ON BAR ADMISSION COURSE REFORM

Ms. Backhouse presented the Report of the Task Force on Bar Admission Course Reform and moved, seconded by Mr. Carter and Ms. Ross that Model 4 set out in the Addendum to the Report and recommendations #2 through #14 on pages 5 to 7 be adopted.

BAR ADMISSION COURSE REFORM

REPORT TO CONVOCATION

ADDENDUM TO
THE REPORT OF THE BAR ADMISSION COURSE REFORM TASK FORCE
AS PROVIDED TO CONVOCATION ON FEB. 19, 1999.

On March 11, 1999 a combined meeting of the Bar Admission Course Reform Task Force and the Admissions and Equity Committee met to consider the additional feedback that has been received during the extended consultation period. This addendum provides a description of the nature of the feedback received. Based upon this feedback an additional model of the course is presented for consideration. The additional model retains all of the content that the Task Force judged to be valuable, based upon the research conducted and the consultations held, but it provides for more flexibility and substantially earlier calls to the Bar.

Additional Consultation - Prevalent Views

There was no single dominant view with respect to what the Bar Admission course should be. There was nearly universal support for an enhanced emphasis on skills, and an integration of more practical exercises in the skills teaching, but beyond these points views differed. The responses received from the law schools generally were in favour of a single period of instruction between the earning of the LL. B. and articling, although there were differing views about the content of the in-class instruction. The law schools supported the offering of the BAC in each of the law school cities, but they made it clear that they were not offering administrative or faculty involvement in the course; nor could they guarantee that any space would be made available. Although there was substantial interest expressed from a number of different sources for abandoning the teaching of the transaction focussed substantive law courses, this view was not held by those most familiar with the students going through the Bar Admission Course. There was virtually universal agreement amongst the instructors, senior instructors, and section heads that this form of instruction is essential in preparing most BAC students for practice. Considering that the members of this group are all practising lawyers, and that they are the only group to see the breadth of the student body, the Task Force gave considerable weight to their strong expression of support for the continued teaching of transaction focussed courses in those areas of substantive law currently addressed.

Much of the feedback received is opposed to the sandwich model for the course. Some of the feedback suggests that the substantive/transaction-oriented law teaching/examination portion be replaced with an examination-only portion. This view was expressed by a number of the large law firms. However, the representatives from the firms generally agreed that the experience of their articling students is considerably different from that of the majority of the students in the BAC. Many of these firms conduct their own training in this area, so in that case it is not argued that a teaching segment is not required - it is simply not required for students already involved in a comprehensive training program. Some suggest that if a non-teaching model works for many of the American states then it can work here. This argument seems to ignore the fact that in the States many legal education experts are quite unhappy with the low level of preparation that individuals receive for admission to the Bar. In addition, a large number of states have implemented some form of mandatory continuing legal education for the junior bar in order to compensate for the lack of training prior to call. In addition, profit oriented cram schools have arisen in jurisdictions in which examinations occur without prior training.

In light of this feedback, an additional model is being proposed which recognizes that students do have different needs and experiences in relation to their pre-call training. The model has been designed to satisfy a range of different student needs by allowing students to tailor the order of the course (not the content) to meet their individual requirements. This permits those who wish to do so to dispense with the "sandwich" model, and it allows all students to substantially reduce the time to call (as opposed to the existing course), while at the same time retaining the essential educational components of the recommended model. The reduction in time to Call, through the elimination of the "down time" from the current model, appears to be sufficiently desirable that at the joint Task Force and Admissions and Equity Committee meeting it was recommended that the original model be altered to accommodate this scheduling.

The feedback also emphasized the importance of ensuring that the "substantive law" teaching was not substantive law, but a focus on analysing typical legal problems faced by clients, determining an appropriate course of action, and completing the transactions required to successfully achieve the ends desired. The testing in any new model of the BAC must focus on the analysis of client problems and the completion of required transactions. This will be a priority in the implementation of either of the new models recommended.

Recommended Model:

The recommended model is still the model that is presented in the Report to Convocation of Feb. 19, 1999. However, the recommended scheduling of the model has been changed to be:

Phase One (8 weeks) -	May/June
Phase Two (Articling) -	July-June (12 months with 4 weeks available for vacation)
Phase Three (12 weeks) -	July/August/September
Call to the Bar -	October/November

The pedagogical strengths of the recommended model are reiterated below, since this model becomes one of the scheduling options under the additional model being proposed.

Model 4 - Student Choice:

This model has identical content and methodology to the recommended model, with the exception that the scheduling of the phases is at the student's discretion. (Presumably pure student discretion will be modified by the wants and needs of the articling principal, since they would also be impacted by the changes in scheduling.) The student choice would be restricted to three options:

Scheduling Option 1: *(Identical to the proposed model.)*

Phase One (8 weeks) -	May/June
Phase Two (Articling) -	July-June (12 months with 4 weeks available for vacation)
Phase Three (12 weeks) -	July/August/September
Call to the Bar -	October/November

Scheduling Option 2:

Phase One (8 weeks) -	May/June
Phase Three (12 weeks) -	July/August/September
Phase Two (Articling) -	Oct. - Sept. (12 months with 4 weeks available for vacation)
Call to the Bar -	October/November

Scheduling Option 3: *(Blending of Phase One and the start of articling. This would involve moderate additional cost - less than $40,000 per year.)*

Phase One (16 weeks) -	May/June/July/Aug. (Evenings and/or weekends)
Phase Two (Articling) -	May-June of the following year (12 months required, with 4 weeks available for vacation, although up to 14 months are available)
Phase Three (12 weeks) -	July/August/September
Call to the Bar -	October/November

These options are presented graphically in the attached chart.

In each of the scheduling options the students could be called to the Bar in October-November the year after graduation from their LL. B. The options substantially reduce the time to call by eliminating the "wait" time in the current model. This model would require the instruction to occur during the summer months, and it is anticipated that instructors would be available during this period. The concepts of self-study and flexible timing of examinations contained in the original proposal could be applied to the 12 week portion of this course that deals with transactions in areas of law.

The first scheduling option matches the recommended model. This would be the scheduling option that is strongly recommended to the students. Although the "sandwich" or "co-op" model is unpopular, it offers clear pedagogical advantages. The mixture of experience and classroom instruction is a highly valued educational pattern for high level vocational training. Our current instructors have commented on the value of being able to draw upon the articling experiences of the students in order to make the current Phase Three interesting and relevant. The articling principals provided strong anecdotal support for the preparation that Phase One provides so that the student-at-law can be assigned meaningful tasks early in the articling experience.

The second scheduling option also prepares students for articling, but it does not utilize the articling experience for making the Phase Three experience more valuable. However, it avoids the dislocation and disruption that some students experience as a result of the sandwich model. For students who article in large firms with well structured training programs of their own, this pattern may provide a more valuable experience overall. It does meet the expressed desire from the large firms to allow students who are hired back to move directly from articling to employment.

The third scheduling option allows for immediate earning for those for whom the income is critical. At the joint meeting of the Task Force and the Admissions and Equity Committee concern was expressed with respect to any pattern that allowed students to begin their articles with no preparation. This model allows for this preparation to occur concurrently with the start of articles. Surveys would have to be conducted with potential students to determine whether they wanted the part-time Phase One delivered on evenings or weekends. The cost of offering some sections of the course in this fashion would be minimal, but it could only be offered where numbers warrant. This option would not be suitable for the majority of students, but it may meet a very real need for some.

Model 4 - Student Choice

8 week Phase One + 12 Week Phase Three + Articling, scheduled by student choice.

<table>
<tr><td>May</td><td>June</td><td>July</td><td>Aug.</td><td>Sept.</td><td>Oct.</td><td>Nov.</td><td>Dec.</td><td>Jan.</td><td>Feb.</td><td>Mar.</td><td>Apr.</td><td>May</td><td>June</td><td>July</td><td>Aug.</td><td>Sept.</td></tr>
<tr><td colspan="17">Scheduling option 1: (Identical to the recommended model.)</td></tr>
<tr><td colspan="2">Phase One</td><td colspan="12">Articling (12 months including 4 weeks vacation)</td><td colspan="3">Phase Three</td></tr>
<tr><td colspan="17">OR</td></tr>
<tr><td colspan="17">Scheduling option 2:</td></tr>
<tr><td colspan="2">Phase One</td><td colspan="3">Phase Three</td><td colspan="12">Articling (12 months including 4 weeks vacation)</td></tr>
<tr><td colspan="17">OR</td></tr>
<tr><td colspan="17">Scheduling Option 3: (Blending of Phase One and the start of articling.)</td></tr>
<tr><td colspan="4">Concurrent Phase One</td><td colspan="13">Note: In this model the part-time Phase One is spread over 16 weeks.</td></tr>
<tr><td colspan="14">Articling (12 months including 4 weeks vacation)</td><td colspan="3">Phase Three</td></tr>
</table>

TABLE OF CONTENTS

APPENDICES

TERMS OF REFERENCE AND COMMITTEE PROCESS

On June 11, 1998, the Benchers in Convocation considered the Report of the Admissions and Equity Committee entitled "Bar Admission Reform" and adopted the recommendations at paragraph 62 and paragraph 80 of that report as follows:

- *that there be an effective and comprehensive bar admission education and training program that law school graduates be required to complete successfully as a prerequisite to admission to the bar*
- *that the articling program be continued and enhanced as an integral part of an effective professional education and training program*

In addition, Members of Convocation requested that the Admissions and Equity Committee provide Convocation with a further report presenting potential program models.

In response to this request, the Admissions and Equity Committee struck a Task Force on Bar Admission Course Reform in order to explore options and fully develop a proposal for Convocation's consideration and decision. The members of the Task Force are Nancy Backhouse, Harriet Sachs, John Borrows, Bill Carter, Philip Epstein, Michelle Fuerst, Eileen Gillese, Donald Lamont, Marilyn Pilkington, John Saso, Christina Tari, and Brad Wright. Law Society of Upper Canada staff supporting the Task Force include: Bob Bernhardt, Mimi Hart, Ian Lebane, Mary Shena, Roman Woloszczuk, Theresa Shanahan (consultant), and Michael Skolnik (consultant).

The Task Force met from July 1998 to February 1999. During this period, the Task Force reviewed considerable research with respect to practises in other jurisdictions, commissioned and reviewed a survey of the junior bar, examined a variety of models and options, produced and circulated a consultation document, reviewed the feedback from the consultation process, and produced the recommendations herein. The recommendations address a dual focus of the BAC: ensuring minimum levels of competence will be attained by all those called to the bar; and enhancing the skills, knowledge and attitudes of every student enrolled in the BAC.

EXECUTIVE SUMMARY

The following report presents a summary of the considerable research that has been undertaken with respect to bar admission education, provides several models of possible organizational structures for the Bar Admission Course, provides a recommendation with respect to the best model, and discusses a number of options that could be incorporated into the model chosen and makes recommendations with respect to several of these options.

The research presented in the report does suggest that some change in direction is appropriate. Specifically, there is considerable evidence that supports the need for continuing the movement toward a greater focus on skills; a movement that was initiated in the 1988 report from the Legal Education Committee, chaired by James M Spence, Q. C. The evidence also points to a need to focus to a greater extent on the completion of transactions in the teaching and examination of substantive law. Given the wide range of skills and knowledge that students acquire at law schools and concerns with respect to issues of access and equity, the design of any new course must provide considerable flexibility with respect to the range of student learning experiences which are supported. Another major design consideration for the Task Force was cost. The students face the direct cost of the course itself, substantial indirect costs associated with loss of earnings while in attendance, and reduced earnings as a result of extensions in the time to the Call. As a result, the new model attempts to reduce the time until Call. There is a recognition that many of the technological enhancements to the course that were suggested in the Spence report have not been implemented, and the report anticipates better use of technology to facilitate student learning and assessment. Finally, and most importantly, the new model focuses on the definition of a competent lawyer, as approved by Convocation, in determining the appropriate skills and knowledge to teach and assess. The focus on this definition underlies much of the material presented in the report.

Specific elements of the report discuss the role of the Bar Admission Course in the continuum of legal education leading to practice, the need for some level of reform to the current model, the research from LPIC data and complaints data indicating a need for ongoing skills development, and the movement toward skills education in other jurisdictions. The role of articling is reviewed, and further opportunities for skills development during articling are identified. The role of the Bar Admission Course in the teaching and/or examination of substantive or transaction oriented law is discussed with respect to the corresponding role of the law schools. Assessment for competence is central to the Bar Admission Course, and a section of the report reviews a number of possible approaches to this assessment along with the issues associated with each strategy.

RECOMMENDATIONS

The proposed changes to the Bar Admission Course will result in a program with an increased focus on the application within law of the skills identified in the definition of a competent lawyer. There appears to be a near consensus that the substantive or transaction oriented areas of law currently covered are appropriate, and there is no recommendation to change the seven areas of law (plus Professional Responsibility) currently included in Phase Three. The recommended model has the possibility of reducing the time to Call by one month (more if the July/August slack period is used), and it involves a total of 20 weeks of instruction as opposed to the current 19.2 weeks. Introducing greater flexibility with respect to when and how examinations may be written could potentially shorten the time to Call by a further three months for some students.

Pedagogically, the recommendations recognize that skills are most effectively acquired when students perceive them as valuable and related to their future areas of practice. This is supported both by experience with Phase One in our current Bar Admission Program and through the research detailing the experience of teaching skills in other jurisdictions. The second major pedagogical shift is toward flexible, or varied, approaches to learning. Adult learners in particular have differing learning styles, and effective approaches to adult learning provide opportunities for learners to learn in multiple ways. It is important to distinguish this flexibility in learning methodology from the standards for the assessment of competency. Flexible learning does not imply flexible or lowered standards for measuring competence, even when there is flexibility in the tools applied to measure competence. Finally, the pedagogical value of integrating experiential and instructional learning has resulted in a retention of the sandwich model, notwithstanding the recognized difficulties that this model presents for some of the students. Greater flexibility as to where the teaching phases can be taken may help eliminate or ameliorate a number of the disadvantages associated with the sandwich model.

The recommendations made within the report are as follows:

Recommendation #1:

The recommended model of the Bar Admission Course should be adopted to commence with Phase One in 2001. The model consists of:

- *an eight-week skills oriented teaching and examination term prior to articling (Phase One);*
- *offering of Phase One in each of the Ontario cities with a law school;*
- *the integration of two areas of law into Phase One, one barrister focused and one solicitor focused, in order to make the skills exercises more practical;*
- *student choice (limited) with respect to the areas of law their skills courses are oriented toward (e.g., solicitor - Business or Real Estate law; barrister - Family Law or Civil Procedure);*
- *completion of the bar examinations for the two chosen areas during Phase One;*
- *a 52-week articling period (Phase Two);*
- *a 12-week teaching and examination term after articling that focuses on practice and substantive law with an emphasis on the completion of common transactions in the area of law under study (Phase Three);*

- *flexible study methods supported by self-study materials developed for all Phase Three modules (to assist in distance learning);*
- *Computer-assisted study materials developed to the extent feasible; and*
- *opportunities to self-study and write examinations earlier, to the extent that it is feasible to allow/support this option.*

Recommendation #2:

Rather than set specific sites for the Bar Admission Course, the Department of Education should be encouraged to make arrangements for the course to be offered in as many sites as feasible within the constraints of budget and the quality of the educational experience.

Recommendation #3:

The Law Society of Upper Canada should continue to be the organization that delivers both the examination and teaching components of the Bar Admission Course.

Recommendation #4:

The Law Society should initiate a dialogue with Ontario law schools in order to ensure that the Bar Admission Course is not repetitive of the learning that is common to the LL. B. programs within the province.

Recommendation #5:

The lecture and seminar materials in the substantive law portions of the course should be converted for computer-assisted access and learning to the extent feasible, within the funds available.

Recommendation #6:

Given the importance of equity and diversity issues expressed in the consultation document in the Aboriginal and equity group consultations and in the literature review conducted by the LSUC Equity Initiatives Department, the implementation of the new model for the LSUC Bar Admission Course will incorporate responses to these issues as feasible. To a large extent this will be accomplished by ensuring that the model, and its subsequent implementation, provides the flexibility in learning opportunities that will meet the needs identified. This flexibility in learning opportunities does <u>not</u> imply flexible or lowered standards for measuring competence. Further, the Department of Education will ensure continued dialogue during implementation with concerned individuals, including the Treasurer's Equity Advisory Group and those involved in the Aboriginal and equity group consultations who wish to remain informed.

Recommendation #7:

Recognizing that articling represents the largest segment of the Bar Admission process, and notwithstanding the strong valuing of this component by the junior bar (88% rate the experience as positive), the Task Force recommends that further research and analysis be done on articling to address issues such as:

- *whether articles should be shortened,*
- *the most appropriate duration period for articles,*
- *whether guidelines should be established for salary and working conditions,*
- *the range of quality in the articling placements,*
- *methods for monitoring and improving the quality of placements,*
- *the Law Society's responsibility in finding suitable placements, given that articling is a requirement for entry into the profession.*

Recommendation #8:

The Department of Education should be required to prepare formal implementation and evaluation reports to the Admissions and Equity Committee, and Convocation, on a yearly basis, which would allow these bodies to evaluate, monitor, and adjust the changes being implemented.

Recommendation #9:

The primary source of instructors and authors for the Bar Admission Course should continue to be volunteer members of the practicing bar. Instructors should be trained and supported for their roles, and their success should be monitored and assessed.

Recommendation #10:

A pilot project should be initiated to study the difficulties and benefits in allowing students to self-study and complete Phase Three examinations at an earlier point. The pilot could involve two examinations whose courses are scheduled toward the end of Phase Three, and involvement in the pilot would be on a volunteer basis.

Recommendation #11:

Sufficient substantive law should be integrated into the skills component so that the skills teaching is valued and viewed as practical by the students.

Recommendation #12:

Increase the emphasis on practice management, and ensure that materials developed for this component are readily available to the practicing bar.

Recommendation #13:

The legal research component should be updated on an ongoing basis to provide strong legal research skills for both manual and computer-assisted research, and the training and materials developed should be offered through CLE.

Recommendation #14:

The Phase Three modules should be reviewed to ensure that the focus within each module is on the completion of common transactions within the area of law.

MODEL OPTIONS AND RECOMMENDATIONS

The following parameters for designing and assessing new models and options to be implemented within models emerged after considerable background research, consultation and review.

1. The opportunity for students to interact with practising lawyers throughout the BAC is one of the greatest strengths of the current system, and any new model must incorporate this valuable interaction.
2. Students who have earned an accredited LL.B. have demonstrated that they have obtained a reasonably broad-based understanding of law, and the ability to acquire knowledge within law.
3. The move toward a concentration on lawyering skills, as opposed to substantive knowledge, that was initiated with the Spence reforms is appropriate and should be carried further. The focus of the BAC should be on the skills that individuals entering the Bar need to acquire in order to be competent lawyers.
4. The definition of competency that the BAC should work toward is the definition as approved by Convocation. At the same time, the BAC courses should, through constant review and revision, address any other shortcomings indicated through the LPIC data and the Complaints data.
5. The new BAC should:

- improve the competency of those entering the profession,
- be free from unnecessary barriers to the achievement of equity,
- increase the access options for individuals taking the course, and
- be reasonable in terms of direct and indirect cost.

Based upon these parameters and upon the research conducted, the following criteria were applied in the development and assessment of models:

1. The teaching and evaluation focus for the new BAC model should be on skills, transactions, and professional responsibility and values.
2. Teaching/testing within the areas of law should focus on the completion of transactions from the point of initial contact to the point of final resolution.
3. The BAC should integrate the teaching of skills and substantive law to a far greater extent than is currently done. For example, if courses are organized around skills, students would choose areas of law in which they are most interested and which are best supported by their previous education, and the skill exercises would all relate to this area or areas.
4. Students should be required to take a common set of skill courses, unless they have demonstrated the achievement of the skill through prior learning or achievement, in which case advanced courses may be available.
5. Examinations should be criterion-based, and the overall assessment of course completion should be comprehensive and reflect performance levels in both skills and knowledge.
6. The articling period will stay at the length it is currently, and additional structured development of targeted skills will become part of the articling phase.
7. The length of the BAC could be variable from student to student under a new model.
8. The BAC materials are highly valued, and such materials should be enhanced and broadened in the new model. The materials should be offered in a variety of formats convenient to the profession and students.
9. The cost of the new model for both the Law Society and students must be reasonable. Keeping student costs reasonable suggests that the time to call be no longer than necessary.
10. The new model should improve access both geographically and with respect to time constraints.

The following pages of this section present a recommended model, two alternative models, a discussion of several key issues to address in any model, and a series of recommendations relating to these issues.

RECOMMENDED MODEL

This is a new model developed to:

- focus on those skills identified within Convocation's definition of the competent lawyer;
- provide reasonable access through multiple locations and computer supported self-study;
- continue the current strong articling component with an increase in structured development of selected skills during the articling experience;
- provide a more flexible learning environment that will better meet the needs of individual learners, and will help address a number of the equity concerns present in the current model; and
- be delivered at a reasonable cost.

Recommendation #1:

The recommended model of the Bar Admission Course should be adopted to commence with Phase One in 2001. The model consists of:

- *an eight-week skills oriented teaching and examination term prior to articling (Phase One)*
- *offering of Phase One in each of the Ontario cities with a law school;*
- *the integration of two areas of law into Phase One, one barrister focused and one solicitor focused, in order to make the skills exercises more practical;*
- *student choice (limited) with respect to the areas of law their skills courses are oriented toward (e.g., solicitor - Business or Real Estate law; barrister - Family Law or Civil Procedure);*
- *completion of the bar examinations for the two chosen areas during Phase One;*
- *a 52-week articling period (Phase Two);*
- *a 12-week teaching and examination term after articling that focuses on practice and substantive law with an emphasis on the completion of common transactions in the area of law under study (Phase Three);*
- *flexible study methods supported by self-study materials developed for all Phase Three modules (to assist in distance learning);*
- *computer assisted study materials developed to the extent feasible; and*
- *opportunities to self-study and write examinations earlier, to the extent that it is feasible to allow/support this option.*

Features of the model are as follows:

- A skill oriented eight-week teaching phase prior to articling. The skills taught are reinforced through a variety of exercises based in selected areas of law. Students will have a choice with respect to which area of law their exercises are drawn from, and they will receive substantive law training within the area chosen, and they can proceed through the skill-based courses at either a common or an advanced level. (Certain prerequisites may be required for the advanced stream.) The initial eight-week teaching phase focuses on skills while covering two of the examinations currently in Phase Three.
- After completion of Phase One, students would commence an articling period of one year, including one month vacation. The start of this articling period could vary based upon when students did Phase One. During this articling phase, students will complete exercises/evaluations in time management, docketing, file management, and professional responsibility.
- The transaction/procedural law component that is currently covered in Phase Three will be covered through two examinations in Phase One, one from a barrister oriented area of law and one from a solicitor area, and by six examinations in Phase Three. Examinations will be focussed on the knowledge required to complete common transactions within the area of law. Phase Three courses will be offered through self-study (with video lectures), or through lectures and seminars offered in a format similar to the current Phase Three.
- The development of computerized self-study modules in the areas of substantive/transaction oriented law would allow the support of other major competency initiatives. The material could be used for requalifications and selected competency undertakings, sold to practitioners through CLE, and marketed across the country in areas of federal law. A proposal has been submitted to the Law Foundation of Ontario to seek project funding in order to initiate this development.
- As the model is implemented, computerized examinations will be developed for some courses to provide increased flexibility to students with respect to when they write the examinations and complete the courses.
- Students would be eligible for call to the bar after they had completed each of the required components.

Phase One

Prior to entering Phase One, students would choose two areas of law from a limited range of selections (e.g., barrister - Civil Procedure or Family Law; solicitor - Real Estate or Business Law) as the area of concentration for their skills courses. The skill exercises would be available at an advanced or common level. Upon completion of Phase One, the students will have written examinations in the two areas of law they have chosen. Attendance would not be mandatory for all days within Phase One; however, students would be required to attend when skills are being demonstrated, practised, or evaluated.

The courses in Phase One of the new model would be:

Introduction to Professional Responsibility (Days 1 and 2, and Week 8):

Rules of professional conduct.
Lawyer's responsibility as an advocate.
Conscientious and diligent performance of duties.
Knowledge of skills required to be a successful lawyer.
Major changes within the profession.
Professional development for practising lawyers.
Personal professional development plan.

Professional Skills - Solicitor (Weeks 1, 2 and 3):

Content: Substantive law
Strategies for legal research.
Interviewing and counselling clients.
Negotiating.

Evaluation: Research and drafting assignment.
Mock client interview.
Mock client counselling.
Mock negotiation
Substantive Law examination focussed on transactions.

Practice Management (Week 4):

Content: File management.
Strategies for loss prevention.
Business communications principles and protocols.
When, and how, to refer.
Client communication and relations.
Time recording, docketing and billing.
Accounting.
Client communications and relations.
Effective delegation and supervision.

Evaluation: Knowledge based multiple choice examination.

Professional Skills - Barrister (Weeks 5, 6 and 7):

Content:	Substantive law Litigation. Advocacy - Oral. Advocacy - Written. Investigation of facts, identification of issues, identification of alternatives. Drafting legal memoranda. Alternative dispute resolution (ADR).
Evaluation:	Opinion letter to client. Court of Appeal Factum. Oral advocacy exercise. Mock examination-in-chief. Mock examination for discovery. Substantive law examination focussed on transactions.

Phase Two

In this model, articling would occur in a similar fashion to the way it does currently, with the addition of exercises/evaluations in time management, docketing, file management, and professional responsibility.

Phase Three

Phase Three would consist of the six remaining areas of substantive/procedural law for each student from Civil Procedure, Criminal Law, Family Law, Real Estate Law, Public Law, Estate Planning, Business Law and Professional Responsibility. (Recall that each student has completed two areas of law in Phase One.)

The examinations in substantive/transaction oriented law would focus on the practical knowledge required to complete common transactions within the specific area of law. Examples of the material that would be covered are presented at Appendix IX. The learning associated with these examinations could be through self-study (with video lectures) or live lectures and attendance at seminars. The greater the flexibility, the better the needs of individual learners and equity seeking groups can be met.

Students would be assessed on all of the components of their course, and they would have to demonstrate a minimum level of competency in each area/skill, as well as an overall level of competency when the individual scores are combined. The structured skill development exercises during the articling phase would be evaluated by LSUC faculty, or by volunteer instructors, not by the articling principal. To be called to the bar, students would have to have successfully completed all phases of this model.

ALTERNATIVE 1: CURRENT BAC

The BAC began in 1959, and its current form was mandated by Convocation in May 1988, through the approval of the model proposed in the "Spence Report." The BAC is currently offered in Toronto, Ottawa, and London. The course in Ottawa is offered in both English and French.

The current structure of the BAC as has been in place since 1990 is as follows:

- Phase One: Following the three-year LL.B. degree, law students attend a one-month skills training program offered twice annually, in May and June. Attendance is mandatory.
- Phase Two: Students article for 12 months.
- Phase Three: Students return to the Law Society for a fifteen-week program in which they take eight courses and write examinations in each course. Attendance at course seminars is not mandatory but is strongly encouraged.

Students must successfully complete each of the three phases.

Phase One

Phase One of the BAC assists candidates with the transition between law school and articling. The purpose is to introduce students to key practice skills and to provide them with the opportunity to practise those skills in a workshop-like environment. Unlike Phase Three, Phase One does not emphasize knowledge of procedural and substantive law. Twenty students are grouped in seminars and remain with their group throughout the month-long session. Students practise skills relevant to each unit, both in class exercises and as a part of a number of assignments arising out of an assigned client file. This Phase consists of six units: Professional Responsibility and Practice Management, Interviewing, Legal Research, Legal Writing and Drafting, Alternative Dispute Resolution and Advocacy. Students are assessed on interviewing a client, preparing a research memo, writing an opinion letter and an affidavit, making submissions on a court motion and sentencing submissions in a criminal matter, and applying the Rules of Professional Conduct to an assigned ethical problem.

Phase Two

Phase Two is the articling year. It was mandated in its current form by Convocation in October of 1990. Lawyers supervising students must be approved as articling principals based upon prescribed criteria in the areas of experience, competence and ethical standards. Principals file an articling education plan setting out the experience the student will receive during the articling year. The education plan describes how the placement meets the Law Society's requirements for an articling position and provides a basis for evaluating the articling experience.

Students under articles complete a Professional Responsibility examination. The examination is reviewed by the principal using a marking guide provided by the Law Society. The examination tests students' ability to apply practically the *Rules of Professional Conduct*. In addition, evaluations of articling are completed by both the student and the principal at mid-term. Students also submit an evaluation of their experience at the end of their articles.

Phase Three

Phase Three is an intensive 15-week program, offered once a year. It normally requires the successful completion of Phase One and Two as a prerequisite. It commences in September and concludes in mid-December.

Students take courses and write examinations in eight subject areas as follows:

- Business Law, including corporate commercial, related tax, related creditor and debtor remedies, and basic securities;
- Civil Litigation, including alternative dispute resolution, evidence, and related creditor and debtor remedies;
- Criminal Procedure, including evidence;
- Estate Planning and Administration, including will drafting, and related tax;
- Family Law, including evidence, related tax, and related creditor and debtor remedies;
- Professional Responsibility, including risk management and the application of the Rules of Professional Conduct;
- Public Law, including preparation for an appearance before administrative tribunals, and evidence;
- Real Estate, including related tax, and related creditor and debtor remedies.
- Aboriginal Law is currently covered as a separate day of instruction, and then integrated into examinations in several of the areas listed above.

BAC Reference Materials are provided to students for assistance. Computer-assisted instruction is also available in basic tax law and law practice accounting. Seminar instruction is delivered by practising lawyers who volunteer to teach part-time in their particular areas of practice. Students are placed in groups of 20 to 25 and remain in their group throughout this phase. Substantive and procedural law, as well as lawyering skills and legal transactions, are covered through classroom exercises and assignments that are created to simulate practice.

ALTERNATIVE 2: 12 -WEEK SUMMER SCHOOL MODEL[1]

The Bar Admission Course Reform: Discussion Paper presented to Convocation on February 27, 1998 proposed a new model that, following law school, would replace the current program with a 12-week summer school program, and which would be followed by the articling year. Key components of the proposal are that the Law Society would endeavour to locate the program in cities in which the Ontario law schools are located, and, if feasible, within the law school facilities. Further, there would be a major emphasis in teaching and testing on professional responsibility, risk management, practice management, and lawyering skills. Under this model, students would be required to pass licensing examinations, skills assessments, and other tests of their entry-level lawyering competence, including basic knowledge of substantive law and procedure in core subjects. The licensing examinations would be in the form of comprehensive examinations administered over a two to four-day period.

ENHANCING SKILLS

The definition of the skills, attributes and values of the competent lawyer approved by Convocation in 1992 underpins the proposals in this report. The focus provided by this definition, the developments in other jurisdictions, the data provided by LPIC, the analysis of the complaints data of the Law Society, and the feedback from the consultation process, all indicate that there is a need for a greater emphasis on skills. This is consistent with the original direction established by the Spence Report on Bar Admission Course Reform in June 1988. The Spence model introduced the teaching session prior to articling as a means of providing students with the "skills of practice." Mimi Hart, Director (Acting) of Articling, reports that the anecdotal feedback from articling principals suggests that, for most of the articling placements, this focus on skills prior to articling has been very successful at producing a more productive experience for both the student-at-law and the principal.

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[1]A detailed discussion of this model can be found in *Bar Admission Course Reform: Discussion Paper*, Bar Admission Course Review Working Group, approved by convocation on February 27, 1998 for the purpose of consultation with the profession, law schools, students and other interested persons.

The research summarized in the "Background" section of this report overwhelmingly supports an increased emphasis on the teaching of the skills required to be a competent lawyer. However, a common theme throughout the research on bar admission training in other jurisdictions, the consultations conducted as part of this process, and the research on the opinions of our current students and recent graduates is that there is a need to integrate increased substantive law into the skills training. As the results of the York University study indicate, the current Phase One is not highly valued by those who have experienced it over the last five years. And yet the skills that Phase One is intended to impart are valued, and appear to be highly correlated with claim and complaint avoidance. Articles on legal training in other jurisdictions suggest that the way to make skills training effective and valued is to ensure that the training is completed within a context of obviously practical situations relating to areas of substantive law that are valued by the student. Students are more likely to view exercises as relevant if they are drawn from an area of law in which they intend to practise.

Skill exercises could be streamed into several areas of law so that students can choose the area of law in which their activities occur. For example, a negotiation could relate to family law, business law, labour law, or numerous other areas. By grouping the activities into these areas, students can choose areas in which their LL.B. provides appropriate background as well as areas in which they are interested.

Recommendation #11:

Sufficient substantive law should be integrated into the skills component so that the skills teaching is valued, and viewed as practical by the students.

The research also suggests that there is currently too little emphasis on practice management. Only 7 per cent of the junior bar surveyed by York University felt that they were 'very well' prepared in this area at the point of their call to the bar.

Recommendation #12:

Increase the emphasis on practice management, and ensure that materials developed for this component are readily available to the practicing bar.

Similarly, only 29 per cent of respondents to the York University survey felt that they were 'very well' prepared in the area of legal research. As computerization continues to influence the nature of legal research, it is important that the Bar Admission Course provide students with the training they need in this area. The ongoing adaption of the legal research component to include an increased emphasis on computer-assisted research could be integrated into any of the proposed models.

Recommendation #13:

The legal research component should be updated on an ongoing basis to provide strong legal research skills for both manual and computer-assisted research, and the training and materials developed should be offered through CLE.

The justification and rationale for these recommendations are presented in the "Background" portion of this report.

ENHANCING THE USE OF TECHNOLOGY IN LEARNING

The legal profession stands at a crossroads as the twentieth century comes to a close. Lawyers are practising in a radically changing work environment with ever-increasing demands by consumers for quicker, less expensive services, and intense competition from other legal service providers. In addition, the use of information technology in the practice of law is no longer a luxury, but an essential tool. In the face of these pressures, it is essential that lawyers are capable of practising law in a business environment that is increasingly driven by technological demands. Participants in the Ontario justice system are leading in the implementation of computer technology in areas of traditional legal practice, making computer literacy an imperative for all practitioners. Examples of this are the Integrated Justice Project of the provincial government, Teranet, which will substantially change the way in which land title documents are registered, and TitlePlus, offered by the Lawyers' Professional Indemnity Company. The Law Society's own project, the Lawyers' Workbench, will revolutionize the way lawyers interact with each other, their clients, the court and their governing body. The Lawyers' Workbench will provide a single source of entry for lawyers into the electronic world. Through it, lawyers will access on-line education, government databases, the Law Society of Upper Canada, as well as other services.

Education plays a critical role in the attainment and maintenance of competence, particularly in the legal profession where members must learn and update special skills and a complex knowledge base. Not only is effective pre-call education essential if newly-called lawyers are to be equipped to provide competent legal services to the public; so too, continuous learning is an essential component of the professional life of lawyers. A consultation process undertaken by the Mandatory Continuing Legal Education Subcommittee revealed that lawyers encounter barriers to their efforts to maintain their competence through ongoing education, including,

- the steep increase in the fixed costs of running a law practice;
- uneven access to library facilities and other learning supports;
- rapidly changing law;
- constantly mounting time pressures; and
- difficult economic times where clients demand more service for lower fees.

The computerization of the highly valued BAC substantive law materials will assist in providing ready access to the learning for the practising bar.

Education available by electronic means has the potential to eliminate geographic barriers and allow all lawyers and students to meet high standards of learning without leaving their home or office. In an electronic education environment, interactive learning tools make it possible for lawyers and students to ask questions, receive feedback on their skills and substantive knowledge, and interact with other lawyers. Lawyers and students province-wide will have greater access to a wider range of professional development opportunities. The traditional model of education involves the interaction of teacher and student in a specified place at a particular time. Technology releases education not only from the confinements of place, thereby eliminating geographic barriers, but also from the confinements of time, relaxing time constraints on learning. Students can learn material, which may have been taught in a traditional model over the course of four days, over a period of weeks or months. Electronic education enables self-paced learning and learning that focuses on the individual needs of lawyers and students. It makes it possible to reach a wider variety of learners.

Recommendation #5:

The lecture and seminar materials in the substantive law portions of the course should be converted for computer-assisted access and learning to the extent feasible, within the funds available.

ENHANCING THE FOCUS ON TRANSACTIONS

Of particular importance is the ability to take the required knowledge, skills and attitudes, and to integrate them in the completion of a client matter. This goes beyond completing a number of common, recurring legal transactions. Lawyers must be able to adapt to changing circumstances, and to recognize and deal with the unique features of each case. At issue is the broader ability to conduct a practice, and to identify and resolve the complex mix of legal and non-legal issues that clients bring to lawyers. This includes the lawyering know-how that makes a practitioner effective and competent, and invites greater emphasis upon the skills of interviewing, negotiation and mediation, as well as the skill of advocacy. This aspect of competence will be taught primarily during the 12-week course and during articling.

Recommendation #14:

The Phase Three modules should be reviewed to ensure that the focus within each module is on the completion of common transactions within the area of law.

LOCATIONS OFFERING THE BAR ADMISSION COURSE:

The *Bar Admission Course Reform Discussion Paper* considered a delivery model in which Phase One of the BAC was presented in the law school cities.[2] During the summer semester at universities there would be significant opportunities for renting space. If this portion of the BAC was available in law school cities, it would allow students to remain in housing arrangements established for the third year of their LL.B. while they completed Phase One of the BAC. Whether the locations were at the universities, at existing Law Society of Upper Canada locations (Toronto, Ottawa and London), or at other rented facilities would depend upon the costs and suitability of each option in each location. There would be an additional cost of maintaining an academic/administrative team in any new centres during the period in which Phase One is delivered.

The current Phase Three has been offered through distance education to students in Thunder Bay and Los Angeles, and there are requests outstanding for distance education delivery in Windsor and Thunder Bay for the coming year. Our experience suggests that Phase Three could be offered wherever there is strong support from the local bar. Although there are increased costs associated with remote delivery, the students who are requesting this delivery say that the additional costs they would bear for the shipping of materials to remote sites pale beside the cost of relocating if these options are not available.

If the substantive/transaction oriented portion of the BAC (currently Phase Three) was available through self-study and computerized testing, it would be feasible that students could study and be examined across the province for this portion of the course.

Recommendation #2:

Rather than specify specific sites for the Bar Admission Course, the Department of Education should be encouraged to make arrangements for the course to be offered in as many sites as feasible within the constraints of budget and the quality of the educational experience.

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[2] A detailed discussion of this model can be found in *Bar Admission Course Reform: Discussion Paper*, Bar Admission Course Review Working Group, approved by Convocation on February 27, 1998 for the purpose of consultation with the profession, law schools, students and other interested persons.

WHO SHOULD DELIVER THE BAC?

There have been, and will continue to be, a wide range of possibilities for organizations that could deliver some or all of the BAC. Options include the Law Society (current status), a newly formed Legal Education Society (e.g., Alberta), the law schools (employed for the Legal Practice Course in England and Wales), or the private sector (e.g., bar admission 'cram schools' in many jurisdictions of the United States). Fundamental to the decision about who delivers the course is how the Law Society of Upper Canada would fulfill its mandate to ensure that those who are called to the bar are competent. A model in which the Law Society is not the primary delivery agent could attempt to meet this responsibility through delegating, accreditation, or the maintenance of some form of summative evaluation process. Each of these choices has its own challenges and limitations.

1. Delegation

   Given the nature of the responsibility that the Law Society is mandated to exercise through the legislation, there would be a limit as to what extent delegation can occur. Presumably, a subsidiary organization of the Law Society could exercise the responsibility on the Law Society's behalf, although it may require further legislative change to do so. Considering the costs in managing an organization, this option would only make sense if there was a strong incentive to have a greater separation between the Law Society and the BAC.

2. Accreditation

   The Law Society could accredit other educational bodies to deliver 'acceptable' bar admission programs. A meaningful form of accreditation would still require a substantial involvement on behalf of the Law Society in terms of time, staff and financial resources. Normally, the accrediting body for professional programs defines the nature of the competencies that graduates should demonstrate, the nature of the testing instruments used to ensure these levels of competency, and limitations with respect to aspects of the course such as length, entrance requirements, and so on. The accrediting body then regularly inspects and audits the delivery agents to ensure the criteria are being fulfilled.

3. Summative Evaluation

   The approach of many of the jurisdictions in the United States is to simply examine those who wish to be called to the bar after they have completed some minimum level of education, usually the J.D. (the equivalent of our LL.B.), in order to be eligible to be examined. The examinations are typically only concerned with substantive law, and no attempt is made to ensure that the entrants possess the range of skills that underlie the definition of a competent lawyer. The recognized limitation of this approach is sometimes counter balanced through a 'bridge-the-gap' program requiring new entrants to the bar to continue to take legal training during their early years of practice. The training for the examinations is frequently provided by private sector examination 'cram schools.'

The previous discussion deals solely with the aspect of ensuring competence. Each of the choices of delivery agent would also have an impact on a number of the other values that Convocation has reflected in its discussion of BAC reform thus far.

Equity: How would the Law Society ensure that third party providers satisfy the equity goals of the program? How would the Law Society ensure that the French language program would be provided, (and who would pay the additional costs)?

Access: If the law schools were used, and only one or two chose to participate, how would student access be maintained across the province?

Cost: The current model of the course keeps costs at a reasonable level, and quality high, through the use of substantial amounts of donated time from the profession. Would other providers receive this same volunteer support? Would the collective agreements in delivering bodies permit the delivery of the course substantially through volunteer time? If not, would the course lose the practical aspect that the junior bar appears to value so strongly? How would the overall costs of the program be affected by multiple providers? The maintenance of the curriculum through changes in legislation and jurisprudence is a substantial task. Would this be duplicated across multiple organizations? Currently, students view the BAC as expensive. This is largely because it is, for most of them, their first encounter with an educational program that operates without a government subsidy. Most of their Ontario-based post secondary education would have been supported 60 per cent to 80 per cent by government subsidy. If costs increased substantially, and no government support was provided, would the costs to students represent a strong barrier to access to the profession?

Skills: The increased emphasis on skills will require a course of a substantially different nature from traditional university law courses. Would the universities and their faculty be interested in delivering this form of education? Could other bodies integrate the skills component with articling for effective long term student learning?

Throughout the consultation process the prevailing opinion was that the provision of pre-call training was an appropriate role for the Law Society to exercise, and that this role will become increasingly more important with the enhanced focus on competence.

Recommendation #3:

The Law Society of Upper Canada should continue to be the organization that delivers both the examination and teaching components of the Bar Admission Course.

BACKGROUND

MANDATE FOR THE BAR ADMISSION COURSE

Legislation

The BAC is authorized through the *Law Society Act.* Section 60(1) of the *Act* states that the ". . . Society may maintain the Bar Admission Course . . . " By-Law 12 section 1 (2) states that the "Society shall conduct the Bar Admission Course," and section 2(1) specifically mandates the current structure of the course, including articling.

Mission Statement

The importance of competence, learning and professional conduct is highlighted in the Mission Statement of the Law Society, which can be found at page II of its December 1997 publication, *Governing in the Public Interest,* as follows:

The Law Society of Upper Canada exists to govern the legal profession in the public interest by:

- *ensuring that the people of Ontario are served by lawyers who meet high standards of "learning, competence, and professional conduct" (emphasis added); and by*
- *upholding the independence, integrity and honour of the legal profession*

for the purpose of advancing the cause of justice and the rule of law.

The *Law Society Act* grants the Law Society the authority to educate, license, supervise and discipline Ontario's lawyers. The mission statement provides the manner in which this authority must be carried out: namely, in the public interest, ensuring that the public is served by a competent and professional bar.

The Competent Lawyer

Underlying this mandate is Convocation's definition of a competent lawyer. On November 28, 1997, Convocation approved the *Final Report of the Task Force*, including a working definition of the "competent lawyer":

Definition of the Competent Lawyer

A competent lawyer has and applies relevant skills, attributes, and values in a manner appropriate to each matter undertaken on behalf of a client. These include:

i. knowing general legal principles and procedures, and the substantive law and procedure for the areas of law in which the lawyer practices;
ii. investigating facts, identifying issues, ascertaining client objectives, considering possible options, and developing and advising the client as to appropriate course(s) of action;
iii. implementing the chosen course of action through the application of appropriate skills including:

   (a) legal research,
   (b) analysis,
   (c) application of the law to the relevant facts,
   (d) writing, and drafting,
   (e) negotiation,
   (f) alternative dispute resolution,
   (g) advocacy, and
   (h) problem solving ability

as each matter requires;

iv. communicating in a timely and effective manner at all stages of the matter;
v. performing all functions conscientiously, diligently, and in a timely and cost-effective manner;
vi. applying intellectual capacity, judgment, and deliberation to all functions;
vii. complying in letter and in spirit with the Rules of Professional Conduct;
viii. recognizing limitations in one's ability to handle a matter, or some aspect of it, and taking steps accordingly to ensure the client is appropriately served;
ix. managing one's practice effectively;
x. pursuing appropriate professional development to maintain and enhance legal knowledge and skills; and
xi. adapting to changing professional requirements, standards, techniques, and practices.

This definition is critical to the design of the BAC in that it describes the skills and attributes that an individual should be able to demonstrate in order to be an effective member of the bar.

Role of the BAC with Respect to Competence

One of the most significant responsibilities of the Law Society of Upper Canada is ensuring the competency of those who are admitted to the bar. A critical element in the provision of competent legal services to the public is the development and assessment within the BAC of the knowledge, skills and attitudes upon which competency depends.

Minimum competence must provide the skills and knowledge required to practise law with minimal support. Analysis of the data from the membership information forms submitted by all Law Society members indicates that 23 per cent of lawyers who are in their first five years after call are sole practitioners. Of those who are working with others, the York University data indicates that half of the firms employing these junior members of the bar involve fewer than seven lawyers. Thus, minimum competence implies a range of knowledge and skills that will support individuals who practise on their own, or with little support.

An alternative approach could be to employ a form of limited licensing. The newly called members of the bar could be restricted in their areas or nature of practice. For example, solicitors in England and Wales enter into a two-year training contract at the end of their formal legal education and examinations. The current discussion paper does not integrate any form of limited licensing into the models, although this is an issue that the members of the Task Force felt that the Law Society may wish to examine in greater detail.

RECENT HISTORY OF BAR ADMISSION COURSE REVIEWS

In 1987, in response to the growth in knowledge about competent professional practice, developments in knowledge about adult education, and changes in the nature of the practice of law, Convocation asked the former Legal Education Committee to review the BAC. This resulted in a 1988 report from a subcommittee of the Legal Education Committee, chaired by James M. Spence Q.C. Convocation adopted the recommendations in the "Spence Report," which led to the current model of the BAC. However, not all the recommendations in the Spence Report have been actualized in the current model; for example, the significant increase in skills training and the decrease in substantive law teaching have not been fully implemented. Furthermore, the Spence model proposed a substantially enhanced use of technology to facilitate better and more individualized learning, and the recommendations in this regard have not been realized. Accordingly, a further review of the BAC was sought by Convocation in 1993, which led to a report from the Bar Admission Course Review Subcommittee in 1995, approved by Convocation for the purposes of consultation with the profession, law schools, students and other interested persons. That report summarized the strengths and weaknesses of the current course. After the consultation process, the Admissions and Equity Committee concluded that, although there were useful elements in the 1995 report, further review needed to be conducted.

These events were followed in May 1997 by the approval by Convocation of the *Bicentennial Report and Recommendations on Equity Issues in the Legal Profession*, which raised significant equity issues that needed to be addressed in the BAC, and which affirmed the Society's dedication to achieving equity and diversity in the legal profession. More recently, the Task Force on Examination Performance, while being concerned that the bar admission process presents obstacles for some groups who are under-represented in the profession, provides important guidance in setting the future direction of the bar admission process.[3] Additionally, the Advisory Committee on the French Bar Admission Course investigated issues related to the performance of students in the French language component of the BAC, and advised the Society on the enhancement of the French language bar admission process.[4]

The culmination of the above reviews, along with Convocation's approval of the working definition of a competent lawyer, established the goals of competency, equity, accessibility and affordability to guide further BAC review. The guidance provided by this direction has caused the Bar Admission Course Task Force to search for models and options that:

- focus on the development and assessment of those skills that contribute to the competent provision of legal services;
- provide opportunities for diverse learners to adapt the BAC experience to their learning needs;
- make use of recent advancements in technology and learning theory to make the course accessible through a variety of delivery modes; and
- are cost effective both with respect to course fees, and with respect to students' potential earnings.

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[3]General principles relating to Bar Admission Reform can be found in the *Task Force on Examination Performance Report* at Recommendations 12 to 20. The Task Force recommended, *inter alia*, an effective bar admission instructional and testing program as a means to advancing equity in the bar admission process.

[4]The Admissions and Equity Committee has proceeded on the assumption that the bar admission process will be available in French and English, and that any options adopted by Convocation will include the continuation of both the French and English streams. (Note that the French language program is considerably more expensive, on a per student basis, than the English language program.)

LPIC AND COMPLAINTS DATA

The data from LPIC provides strong support for skill development. As the table below indicates, almost 60 per cent of LPIC claims arise from poor time management, file management and communication skills as manifested in claims coded as "failure to follow instructions," "procrastination," "failure to calendar," "failure to file documents," and "communication with client." Only six per cent of the claims are coded as resulting from a "failure to apply the law."[5]

Percentage of claims	Classification	Related skill area
24.9%	Failure to follow instructions	Time management File management Communication
18%	Procrastination	Time management
9.6%	Conflict of interest - too many parties	Professional Responsibility File Management
8.5%	Failure to calendar	Time management
7%	Failure to file documents	File management
6.1%	Communication with client	Communications
6%	Failure to ascertain deadlines	File management
6%	Failure to apply the law	

The LPIC data indicates that new lawyers (those within the first six years of their call) generate fewer claims than those in practice for a longer period. Statistics suggest that the point in time when lawyers are most claims prone is when a lawyer has practised between six to 20 years. (There are many factors other than the preparation of lawyers that could contribute to this. For example, the data may reflect differences in the nature of the matters worked on, and in the time for errors and omissions to surface.) This speaks to design choices which would encourage ongoing CLE on the part of the lawyer, and to choices which would make practice aids developed for the BAC readily available to practising lawyers.

The LPIC data also indicates that the gap between new lawyers and more experienced lawyers is greater for errors arising from conflicts of interest, public record searches and client relations problems. (That is, more experienced lawyers create more errors in these areas.) This could, arguably, be an indication of success from the more skills and transaction-based approach to the BAC that resulted from the Spence reforms. To test this assumption, LPIC examined the percentage of claims attributed to the junior bar (0 - 4 years) now compared to prior to the introduction of our current skills-based Phase One. The data revealed a significant decrease in the number of claims contributable to the junior bar since the introduction of the Spence BAC model. [*As the table below indicates, although the rate of LPIC claims in total dropped by 3 per cent between the comparison periods, the rate for the junior bar dropped 30 per cent, five times as much.*] Although several other factors may contribute to this change, the data is strongly suggestive of a positive impact of teaching relevant skills on reducing claims against lawyers.

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[5]From the LPIC data: Classification of most frequent claims (covering all but 15 per cent of the claims classified).

Comparison of Claims Experience of Lawyers Called in 1988-92* to that of Lawyers Called in 1993-97[6]*				
		Claim Count	No. of Lawyers	Count of Claims per 100 Lawyers
Claims Reported in 1988-92	New Lawyers Called in 1988-92 All Lawyers	404 14,419	2,980 17,048	13.6 84.6
Claims Reported in 1993-97	New Lawyers Called in 1993-97 All Lawyers	321 13,588	3,380 17,048	9.5 79.7
Percentage Changes	New Lawyers All Lawyers	-21% -6%	13% 0%	-30% -6%

* Both groups limited to those still in practice in 1998.

[6]This chart presents the claims experience in the first five years of practice of those lawyers called to the bar during the period 1988-92 (pre-Phase One), and compared to the claims experience in the first five years of practice of those lawyers called to the bar during the period 1993-97 (post-Phase One). Please note that the review of both groups was confined to lawyers still in practice in 1993. Source: LPIC.

The complaints data from the Law Society of Upper Canada's record of complaints against lawyers categorizes the nature of the result of each complaint (Appendix IV). The data is not as clear as the LPIC data with respect to the underlying cause of the complaint. The top 10 areas of complaints include, among other items, missed financial obligations, delays, instructions not followed, failure to communicate and unsatisfactory practice, all of which could suggest shortcomings in organizational and communication skills.

DATA FROM THE SURVEY OF THE JUNIOR BAR

As part of the BAC Reform process The Institute for Social Research at York University conducted a telephone survey in October 1998, on behalf of the Law Society, of more than 500 members of the junior bar (within five years of their call). The survey asked general demographic questions about each respondent lawyer and the nature of their practice. It then sought feedback about each phase of the BAC focussing on the respondent's perception of how well the BAC prepared them for their current practice of law and in what areas. In addition, the respondents were asked how well prepared they were at the point of their call to the bar in the areas of the skills identified by the Law Society's definition of competency. (This preparation could have been a result of their BAC, LL.B., or other prior education or work experience.) The survey helped identify what skills new lawyers were using and the extent to which each phase of the BAC was preparing them for practice in these skill areas.

When the respondents were asked what were the main professional activities performed in their area of practice, the preliminary results from the survey show that 74 per cent of respondents identified drafting, 60 per cent identified court work, 43 per cent identified negotiation, 42 per cent identified interviewing clients, and 33 per cent identified research as the professional skills performed most regularly at work.[7]

The survey results show that the overall rating of the BAC was low when respondents were asked how well each phase prepared them for the work in law they currently do. Phase Two (articling) and Phase Three were rated higher than the skills-based Phase One. When respondents were asked how well the Phase One component of the bar admission process prepared them for the work they currently do, only 6 per cent responded very well, while 35 per cent responded well enough, 38 per cent responded not very well, and 21 per cent responded not at all. By comparison, when asked the same question about articling (Phase Two), 54 per cent of respondents responded very well, 34 per cent responded well enough, and only 8 per cent and 4 per cent responded not very well, or not at all, respectively. Phase Three also received relatively positive ratings to this question. Eighteen per cent of respondents felt it prepared them very well, 50 per cent responded well enough, 24 per cent felt it did not prepare them very well, and 8 per cent felt it did not prepare them at all.[8]

When respondents were asked what aspects of each phase were found to be most helpful, the respondents identified the practical aspect of the articling (Phase Two) and the materials in Phase Three. By comparison, most of the respondents either did not remember anything positive about Phase One or did not think anything was positive. However, those respondents who did find a positive aspect to Phase One identified the professional responsibility component.[9]

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[7]This data can be found at Table 2 of the survey material, included as Appendix II.

[8]This data can be found at Table 5 and Table 6 of the survey material, included as Appendix II.

[9]This data can be found at Table 7 of the survey material, included as Appendix II.

When the respondents were asked how well prepared they were in the areas of the skills identified by the Law Society's definition of competency at the point of their call to the bar, the lowest ratings were given to alternative dispute resolution, time management, practice management, and negotiation. The highest ratings were given to recognizing a conflict of interest, interviewing, oral communication, legal writing and research. [10]

The high positive response rates for articling, and in particular the practical aspects associated with it, indicate support for the development of skills. However, the survey data suggests a dissatisfaction on the part of junior lawyers with their skills-based Phase One experience at the BAC. Their perception appears to be that the current Phase One did not prepare them as well as the other phases of the course for their current practice of law. This could be attributed to the lack of value placed by students on the skills-based component of the course, which would be consistent with the British experience with the Bar Vocational Course. It may also speak to the need to reconsider the content, delivery and assessment of this portion of the course in order to focus on areas that junior lawyers will need in early practice. In addition, instruction and assessment changes could be made with a view to increasing student incentive and motivation during this phase.

In summary, the survey indicates that respondents did not feel adequately prepared in all competency skills, but that in order to value skills training, it must be seen as very practical.

THE ROLE FOR TRANSACTION/SUBSTANTIVE LAW

There is a range of views with respect to students' breadth and depth of knowledge of law at the conclusion of their LL.B. Some feel that the achievement of the LL.B. should be treated as a necessary and sufficient test of adequate knowledge of law. Others feel that, although it is a necessary condition and may have provided sufficient exposure to law, students should be examined in knowledge of law prior to their call. The most prevalent view appears to be that there is a need for some study as well as testing in knowledge of law prior to admission to the bar.

It has been an area of common understanding between the law schools and the Law Society that law schools are to provide students with a sound, reasoned and critical approach to current substantive law, as well as an understanding and critical appreciation of how the law and legal system function, and to develop in students the skills, in particular, of legal research and analysis, legal reasoning and legal writing. The law schools also provide students with the opportunity to acquire practice oriented skills through trial and appellate advocacy courses, alternative dispute resolution courses and clinical experience, among others. While law schools provide a foundation for those students who intend to move on to the bar admission process, the law schools do not see themselves as being uniquely responsible for preparing students for the Bar Admission Course or the provision of legal services. Accordingly, an effective bar admission process must fill the competence gap between graduation from law school and admission to the bar. The research reviewed by the Task Force suggests that the BAC should focus on those legal procedures and transactions with which the junior bar is most likely to be involved.

Analysis of data from the 1997 membership information forms indicates that the areas of law most commonly practised by members are:

[10] This data can be found at Table 8 of the survey material, included as Appendix II.

Area of Practice	Number of Lawyers	Percentage of Lawyers Practising in Area
Administrative Law	6,452	27.84%
Civil Litigation	10,383	40.53%
Corp. Commercial Law	11,289	44.43%
Criminal/Quasi Criminal Law	4,847	20.36%
Employment & Labour Law	6,111	22.95%
Family Law	4,965	22.35%
Real Estate Law	7,338	32.68%
Wills and Estates Law	7,486	32.03%

An analysis of the 1998 membership information form data relating to the activities of sole practitioners zero to five years after their call to the bar indicates that the most common areas of practice for this group are:[11]

Area of Practice	Percentage of Lawyers Practising in Area
Family/Matrimonial Law	64.1%
Wills, Estates, Trusts Law	61.1%
Civil Litigation	59.4%
Real Estate Law	53.4%
Criminal Law	49.2%
Business Law	37.3%

The primary areas of practice indicated by respondents to the survey conducted by York University were civil litigation, family law, real estate, corporate law, criminal law, and wills and estates.

Collectively, this data suggests that the areas of law covered in the current Phase Three are appropriate for the practice areas of the junior bar. Although an argument could be made for adding employment/labour law, or not doing public (administrative) law, the argument for examining on business, civil litigation, criminal, family, real estate, and wills and estates law is supported by each source of data.

As to the question of whether to teach and examine on substantive or transaction oriented law, a few additional points should be considered. The LPIC data indicates that only 6 per cent of LPIC claims were as a result of failure to apply the law. (Although another 6 per cent is related to a failure to ascertain deadlines, and 7 per cent a failure to file documents, both of which could be related to poor knowledge of the law.) One argument is that these low percentages imply no need to spend time on teaching and testing substantive or transaction oriented law. An alternate argument is that this indicates success in the BAC to date, in ensuring that graduates are adequately knowledgeable.

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[11] [Note: Sole practitioners are frequently used as a focus for BAC considerations since these practitioners lack the ready support of other practitioners.]

The York survey indicates that, in response to a question asking about the most useful aspect of Phase Three, 38 per cent of the junior bar indicated the substantive law materials, and 21 per cent responded substantive law. This valuing of the materials is supported through anecdotal comments received by the Task Force as well. Countering this valuing of materials and substantive law knowledge is a fairly low overall rating of Phase Three. Only 68 per cent of the respondents felt that Phase Three prepared them "very well" or "well enough" for their professional practice. This is a low rating for an educational program. Indeed, 8 per cent of respondents felt that Phase Three prepared them "not at all" for their practice. The primary specific criticism is that it was "not practical enough." In summary, the survey results seem to value teaching and testing in law *if* it is sufficiently practical. Anecdotally, students express the view that the Phase Three content is most valuable when it concentrates on the "how to" aspects of the law, as opposed to the more theoretical background provided within their LL.B.

If the new BAC continues to develop material in substantive/transaction oriented law, it will be important to keep them practical. If components of these materials are available in a self-study mode, they could be made readily available to the profession. This could allow practitioners to study the requisite knowledge and test themselves prior to moving into new areas of practice. This would support both the increased focus on competency in the profession, as well as support LPIC's ever expanding risk management tools.

THE ROLE FOR ARTICLING

Articling is a major means by which the Law Society fulfills its principal responsibility of ensuring competence of candidates for call to the bar. Recognizing that the opportunity for students to interact with practising lawyers throughout the BAC is one of the greatest strengths of the current system, Convocation has recommenced that it be continued and enhanced. Articling has been reviewed at several stages in the BAC history. Most recently, in 1990 Convocation adopted a report of a Legal Education Committee, Articling Reform Subcommittee chaired by Philip Epstein. The articling component of pre-call education requires that the articling principal assume the responsibility of educating the student. To assist articling principals in their role and to ensure a high level of practical training during the articling year, the Articling Reform Subcommittee established criteria for articling as set out in *Proposals for Articling Reform Report*, which proposed the improvement of articling standards, required minimum qualification standards for articling principals, and education plans that met established criteria and that were supported with appropriate supervision and evaluation.[12]

Not all of the expectations for articling reform have been met. Although there is general acceptance of the importance of articling in Ontario, challenges continue to arise for this phase of the BAC. Articling currently stresses the importance of the development of skills for the student-at-law, but there are no BAC courses integrated into the articling experience which are targeted at the development of specific skills (with the exception of the Professional Responsibility assignment). The use of the articling phase for the development of targeted skills such as time management, file management, and legal research requires consideration. The development of skills such as time management requires both knowledge of the technique and the opportunity to practice in a real environment. Articling provides this learning opportunity. The optimal use of technology to assist this learning process within the articling experience and to increase the integration of skills learning within practice could be explored. In addition to these concerns, the lack of a formal mentoring program, which would provide a link back to the Law Society, has been raised previously as a weakness in the continuum among the three phases of the BAC. A mentoring program could provide students with a faculty advisor and a liaison at the Law Society from whom they could seek one-on-one assistance throughout the process. Insufficient staff resources, as well as students' lack of time and structure during the articling

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[12] A detailed description of the proposals for articling reform can be found in *Proposals for Articling Reform: A Report to the Legal Education Committee*, Prepared by the Articling Reform Sub-Committee, adopted by Convocation October 1990, Law Society of Upper Canada.

year have hindered the development of such a mentoring program. Other concerns about articling include the uneven experience from placement to placement, the lack of assessment of student performance, inequities of remuneration and material benefits, and the systemic bias that appears to make good articling placements more difficult to obtain for members of some equity seeking groups.

It is clear the articling experience can be improved and strengthened. However, the benefits of the program strongly outweigh the disadvantages. Articles provide practical on the job work experience, socialize new members into the values of the profession, and provide experiential learning opportunities at a lower cost than classroom clinical experience. Moreover, articling has the potential to provide students with an opportunity to develop a mentoring relationship with an experienced lawyer. Students receive on-going guidance, strategies, and advice. Principals are able to identify gaps in the student's knowledge or skill set, and recommend suitable education programs.

Articling continues to be a significant educational tool in preparing lawyers for practice at the bar. Moreover, there appears to be strong support for Phase Two of the BAC as reflected in the results of the survey of the junior lawyers, as articling received the highest overall rating of the three phases of the BAC.[13]

TESTING FOR COMPETENCE

The recent oral assessment process for assessing the readiness of some candidates to be called to the bar has raised considerable debate with respect to how competence to practise law should be assessed. In general, assessment tools should be valid, reliable, and not unreasonably expensive to apply. Tools are considered "valid" to the extent that they measure those skills, knowledge and attitudes that are most likely to contribute to the successful practise of law. They are reliable to the extent that the same individual would achieve the same score on repeated applications of the assessment.

In general, the more one of the criteria for evaluation is satisfied, the less the others are achieved. For example, standard multiple choice examinations tend to be very reliable, but their validity is low when they assess practical skills. The use of one-on-one assessors for evaluating skills such as interviewing provides high validity, but the cost is high (the assessor's time) and the reliability is low (different assessors value different components and styles for the skill demonstration). None-the-less, Convocation must be confident that graduates of the BAC will be competent to practise. A comprehensive evaluation model would recognize the range of competencies that are important, allow students to balance strong skills in one area against minor areas of weakness, and check for minimum levels of competence in all of the critical areas.

Two other important considerations with respect to assessment are individual flexibility and systemic bias. The current examination system requires large groups of students to write the same examination at the same time. This model of annual examinations, followed by two periods of supplemental examinations, is inflexible, and it has resulted in substantial difficulty for those facing circumstances that make the particular examination dates a problem. The result is that, even if the examinations are non-biased, the manner of application of the examinations has produced systemic bias. In addition, the 'major examination event' approach raises concerns about examination security. Previously, examinations were treated as confidential, and questions from one year to the next could be based upon the previous period's questions. This is no longer the case, as students now have access to their previous examinations for review. The system makes little allowance for individual student needs, is administratively complex, and is subject to significant challenges with respect to the confidentiality of questions.

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[13]This data can be found at Table 5 of the survey results, included as Appendix II.

Where standard examinations are the most appropriate assessment tool, an alternate examination approach is to develop an examination test bank that would provide a significant number of versions of the examinations, all of which are judged to be of equivalent difficulty. In the manual approach, students would have one of the versions administered to them at the point when they take the examination. The version could be recorded so that the student never saw the same paper again. If there are enough versions of the examination, the coverage of the material is so comprehensive that there is literally no advantage in knowing the questions, since they simply relate to the examinable content. In the computerized version of this examination model, students would sit the examination at a computer, and each sitting would produce a different examination where questions within categories are randomly selected. The probability of any two examinations being the same can be made virtually zero, without having too many versions of the questions in each category. As for the manual version, it would also be possible to record questions against the student number so that no student ever saw the same question twice.

Either the manual or the computerized approach would allow significantly more flexibility to be offered to students with respect to when and where they write the examinations. This would be of particular value in the supplemental examination phase, where currently students may be required to write a number of examinations in a brief period. Once established, test banks of this nature would require less work to maintain than our current system for annual examination development. If the examinations were computer administered and graded, the costs of flexible invigilation could more than be offset by savings in marking costs (currently approximately $40,000 per examination). Arrangements with universities and colleges could be established to provide province wide opportunities for access to computerized examinations.

More flexible examination opportunities will address some of the equity concerns that occur within the current, rather inflexible, examination structure. However, to address concerns of systemic bias, alternative oral examinations should be available to students who have expressed and/or demonstrated a need for alternate examination vehicles. Current evaluation systems cause students to focus on the substantive/transaction law sections to a greater extent than skills. Several of the models under discussion anticipate a more comprehensive approach to evaluation where success depends on balancing strengths between skills and examinations. The adoption of such a system should also contribute to the reduction of existing systemic barriers.

TRENDS IN OTHER JURISDICTIONS

The movement toward skills in legal education is compelling and widely promoted. In Australia, Canada, the United Kingdom and the USA there is growing unanimity among legal educators and practitioners about the need to improve the level of lawyers' skills, values and competence in legal education.

Canada

The approach to bar admission is similar in all Canadian jurisdictions; however, the timing and scheduling of the bar admission instructional programs, articling and testing vary in their detail from jurisdiction to jurisdiction (see Appendix V). In all Canadian provinces, except P.E.I., skills training is part of the bar admission course. (P.E.I. students are also required to pass the Nova Scotia B.A.C., and so they do receive skill training, albeit outside of their province.) However, the extent to which skills are tested varies between provinces.

Commonwealth

Other Commonwealth countries, including New Zealand, the United Kingdom, Hong Kong and parts of Australia, have post-degree legal training programs similar to the BAC (see Appendix VI). Additionally, skills competence is also dealt with in a variety of ways including pre- and post- admission work experience (supervised or restricted practice), and mandatory continuing legal education. In England and Wales, the Legal Practice Course (LPC) was introduced in 1993 as a skills focussed, final taught and examined stage of solicitors' training. Although students are guided through basic material in lectures, they spend most of their time learning the compulsory and optional units through participating in practical exercises in workshop groups of 10. Knowledge acquired from the law degree is assumed upon entering the course. The emphasis is on small group teaching and learning by experience through simulated transactions and case studies. Students receive instruction in four compulsory areas of practice, and have the opportunity to choose from a wide range of options. The LPC is assessed through a combination of assessed course work, open book exams and practical skills exercises.[14]

The LPC follows the lead of the British Bar, which introduced a predominantly skills-based training Bar Vocational Course (BVC) for barristers in 1989.[15] The course lasts for a full academic year and trains thousands of students each year. Satisfactory completion of the course is required for those who wish to practise as a barrister in England and Wales. Students may be called as barristers on successful completion of the course, but must complete a twelve-month pupillage before they are fully qualified for professional practice. The majority of students entering the course have law degrees, and therefore have studied substantive law for three years prior to the course. However, a minority have degrees in other subjects, and have only a one year law course where they studied core subjects in law. The BVC consists of 60 per cent skills training and 40 per cent knowledge based. All knowledge areas are taught in practical ways. The main elements of the course are:

Skills: advocacy, opinion writing, drafting, negotiation, conference skills, legal research, fact management

Knowledge: evidence, civil litigation, criminal litigation and sentencing, professional conduct, remedies, revenue law, business associations, accounts, social security law

Specialist areas: in the final term, students study two chosen specialist areas

The basic tenet of the course is the integration of relevant theory and knowledge as well as the teaching of transferrable skills, in addition to the ability to perform independent transactions.

According to Susan Blake, former Course Director at Inns of Court School of Law in London, England, the course continues to progress according to the original plan with minor refinements yearly.[16] The greatest difficulties are

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[14] *Prospectus, Legal Practice Course,* Faculty of Law, Department of Professional Legal Studies, Bristol University, 1996.

[15] Blake Susan, "Legal Skills Training Comes of Age?," *In Institutional Vehicles for Professional Training*, p. 414 - 430.

[16] Blake Susan, "Legal Skills Training Comes of Age?," *In Institutional Vehicles for Professional Training*, p. 414 - 430.

reported in convincing students of the value of the skills elements in the course. *The skills component must be relevant, practical and realistic.* The approach to evaluation of the skills must also be given careful consideration. Evaluation must provide feedback, motivation and incentive to students. Ranking students' skills may prove difficult, undesirable and unnecessary, running counter to the objectives of the program. Although the BVC originally integrated the teaching and assessment of skills, it has since been separated in order to allow teachers to provide immediate feedback to students to develop their skills before formal assessment takes place. This also eliminates the tension associated with assessment from the learning experience.

The Law Society of New South Wales has also experimented with a novel classroom program that focussed on skills applications. Students were placed in mock law firms and carried out a series of legal exercises, including real estate transactions, litigation, business transactions, family law and running a law office. Teaching facilities were extensive, ranging from video facilities, a bank, a registry office and a court. The program was ultimately shortened, and a modified form of articling was reintroduced because it was prohibitively expensive.

Mark Davies from the University of Sussex argues that the movement to a more skills-based approach for solicitors in England and Wales is well based in preventing actions of solicitor negligence. He argues that "many of the occurrences of solicitors' negligence result not from a lack of legal knowledge but from poor working practices." [17] The Legal Practice Course in England and Wales emphasizes the five "DRAIN" skills: drafting, research, advocacy, interviewing, and negotiation. Davies argues that this list should also include skills in time management and file management to avoid missed time limits.

United States-The MacCrate Report

The American system has little to offer Canada in terms of a licensing qualification system. The legal profession in the United States has been very critical of the shortcomings of the American continuum of legal education, including the bar admission process. The requirement for admission to the bar in the U.S. typically includes a law degree, passing the national multi-state bar examination and particular bar examinations of the state. Students go straight from law school to bar examinations. Furthermore, no state has articling.[18] (see Appendix VII) Some states have attempted to address this breach in the continuum of legal education between law school and practice. For example, 25 states have both mandatory bridge-the-gap teaching programs along with mandatory continuing legal education requirements. Sixteen states have only mandatory continuing legal education, and the remaining nine states have neither bridge-the-gap nor mandatory continuing legal education.

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[17]Davies, M. R. , "Is the Legal Practice Course Training Future Solicitors to Avoid Professional Negligence?," *Web Journal of Current Legal Issues*, Blackstone Press, 1996, p. 3.

[18]Delaware and Vermont have, respectively five and six month clerkships requirements.

The inadequacy of the American system of instructing new lawyers in professional skills and values has been outlined by the American Bar Association's *Report of the ABA Task Force on Law Schools and the Profession: Narrowing the Gap (1992)*, better known as the MacCrate Report (see Appendix VIII). This report specifically compares the American models to Commonwealth programs, and sets them apart in terms of their development of quality practical skills instruction. It argues that the most significant development in legal education in the post-World War II era has been the growth of skills training curriculum. However, it notes that despite this commitment in legal education, the practising bar in the United States has not addressed this need in the profession.[19] This report recommends significant change, including an emphasis on lawyering skills and professional values in the system of professional legal qualification and education. It criticizes the lack of a continuum in American pre- and post- call legal education, with one key focus being on eliminating the gap between law school graduation and admission to the bar.

MacCrate identifies a number of legal skills: problem solving, legal analysis and reasoning, legal research, factual investigation, communication, counselling, negotiation, litigation and ADR, and office management. The Report also proposes certain fundamental values, such as the provision of competent representation; striving to promote justice, fairness, and morality; and striving to improve the profession and professional self-development. Recognizing the connection between skills and values in defining competence, the Report defines skills necessary for competent representation in terms of a commitment to certain ethical ideals. Critical to MacCrate's statement of skills and values is the notion that skills and values cannot be detached from one another, and must be taught in such a combined context[20].

CONSULTATION PROCESS

In order to facilitate consultation with those who have an interest in the nature and structure of the Bar Admission Course a Bar Admission Course Reform Consultation Report was published in mid-December, 1998 and circulated to Benchers, law schools, legal organizations in Ontario, law societies across the country, as well as Section Heads and Senior Instructors within the Bar Admission Course. In addition, all instructors within the Bar Admission Course and students within the current Phase Three were sent letters notifying them of the report and inviting them to receive the report upon their request. As well a number of consultation sessions were held with instructors within the course and other interested parties in London, Ottawa and Toronto. A consultation with current LL. B. students occurred at The University of Windsor. In addition two special consultations were held in Toronto - one with interested members of equity seeking groups with an interest in the Bar Admission Course, and the other with interested individuals from the Aboriginal community. The results of these consultations have been provided to the Bar Admission Review Task Force.

In addition to the consultation sessions, individuals and groups who received the report were encouraged to complete a feedback form which captured their views on a number of issues raised in the report. A summary of these responses is provided in Appendix III.

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[19]MacCrate, *Legal Education and Professional Development-An Educational Continuum: Report of the Task Force on Law School and the Profession: Narrowing the Gap*, 1992, p.6 (The MacCrate Report) Chicago: American Bar Association.

[20]MacCrate, *Legal Education and Professional Development-An Educational Continuum: Report of the Task Force on Law Schools and the Profession: Narrowing the Gap,* 1992, Chicago: American Bar Association.

In general the feedback received has been supportive of the current structure of the Bar Admission Course and of the proposed new model. Concerns with the existing course are the length of time to call and the lack of valuing of Phase One. Concerns with the proposed new model relate to the length of the new Phase One. There is strong support for integrating the teaching of substantive law and skills to a greater extent, and many of the respondents supported increased opportunities for computer assisted learning. Virtually all of the individuals in the consultations viewed the Law Society as the appropriate agent to deliver the Bar Admission Course.

Based upon the results of these consultations the Task Force has drafted the following recommendations:

Recommendation #4:

The Law Society should initiate a dialogue with Ontario law schools in order to ensure that the Bar Admission Course is not repetitive of the learning that is common to the LL. B. programs within the province.

Recommendation # 9:

The primary source of instructors and authors for the Bar Admission Course should continue to be volunteer members of the practicing bar. Instructors should be trained and supported for their roles and their success should be monitored and assessed.

Recommendation #6:

Given the importance of equity and diversity issues expressed in the consultation document, in the Aboriginal and equity group consultations, and in the literature review conducted by the LSUC Equity Initiatives Department, the implementation of the new model for the LSUC Bar Admission Course will incorporate responses to these issues as feasible. To a large extent this will be accomplished by ensuring that the model, and its subsequent implementation, provides the flexibility in learning opportunities that will meet the needs identified. This flexibility in learning opportunities does <u>not</u> imply flexible or lowered standards for measuring competence. Further, the Department of Education will ensure continued dialogue during implementation with concerned individuals, including the Treasurer's Equity Advisory Group and those involved in the Aboriginal and equity group consultations who wish to remain informed.

Recommendation #7:

Recognizing that articling represents the largest segment of the Bar Admission process, and notwithstanding the strong valuing of this component by the junior bar (88 per cent rate the experience as positive), the Task Force recommends that further research and analysis be done on articling to address issues such as:

- *whether articles should be shortened,*
- *the most appropriate duration period for articles,*
- *whether guidelines should be established for salary and working conditions,*
- *the range of quality in the articling placements,*
- *methods for monitoring and improving the quality of placements,*
- *The Law Society's responsibility in finding suitable placements, given that articling is a requirement for entry into the profession.*

IMPLEMENTATION PLAN

Given the breadth of the options and recommendations it is difficult to develop a detailed implementation plan at this point in time. Any major structural change in the Bar Admission Course should probably wait for May 2001 to be implemented. If the length of time required for Phase One changes, students who are currently working their way through an LL. B. need to know in advance so that they can establish their plans - both with respect to time and finances. The proposed structural modifications could therefore be implemented in their entirety as follows:

Phase One - May 2001
Phase Three - September 2002.

Of course other changes such as the introduction of additional skills exercises into the articling phase and the computerization of elements of the substantive law courses could begin ahead of this time, with commencement for a number of enhancements in May and September of 2000.

EVALUATION MECHANISMS

The York University survey of the recently called members of the Bar provides a benchmark against which changes can be measured. A very similar survey could be administered within several years of the implementation of a new BAC course. In addition, students who are completing the BAC can be surveyed on a yearly basis to determine their ongoing perceptions of the BAC, and of their readiness for entrance into the profession as compared to the skills identified in the Definition of Competent Lawyer. In addition, several of the recommendations can be monitored directly. The Department of Education should be required to report to the Admissions and Equity Committee of Convocation with respect to the progress of the implementation, and of the positive and negative impacts of the implementation steps taken.

Recommendation #8:

The Department of Education should be required to prepare formal implementation and evaluation reports to the Admissions and Equity Committee, and Convocation, on a yearly basis which would allow these bodies to evaluate, monitor, and adjust the changes being implemented.

Recommendation #10:

A pilot project should be initiated to study the difficulties and benefits in allowing students to self-study and complete Phase Three examinations at an earlier point. The pilot could involve two examinations whose courses are scheduled toward the end of Phase three, and involvement in the pilot would be on a volunteer basis.

APPENDIX I

COSTING CHARTS

A detailed cost analysis can only be made once there are fewer possibilities that could interact within each model. However, the following information is intended to act as a guide to the magnitude of the costs that could be associated with the various models and options.

15. RECOMMENDED MODEL (Including options 1-A, 1-B, and 1-C)

COMPONENT	REDUCTION IN COSTS FROM THE CURRENT MODEL	INCREASED COSTS FROM THE CURRENT MODEL	DEVELOP-MENT COSTS	EXPLANATION
Shifting of components from Phase Three to Phase One:				
Additional delivery costs of phase 1 ($45,000 per additional week).		$225,000 per year	$100,000	Phase 1 - 9 weeks as opposed to 4.
Reduced delivery costs of phase 3 ($45,000 per eliminated week).	$180,000 per year			Phase 3 is 4 weeks shorter due to the two exams moved to Phase 1.
NET EFFECT:		$45,000 per year	$100,000	
Self Study:				
Reduced number of sections as a result of optional self-study materials for the substantive/transaction oriented law courses.	$110,000 per year		$100,000	Assumes 20% of the students access self-study through paper-based materials and thus don't attend 12 weeks of seminars.
NET EFFECT:	$110,000		$100,000	Payback period is less than one year.
Advanced stream for skills:				
Advanced stream for skills		$15,000 per year	$20,000	
NET EFFECT:		$15,000 per year	$20,000	
Computerization of materials:				

COMPONENT	REDUCTION IN COSTS FROM THE CURRENT MODEL	INCREASED COSTS FROM THE CURRENT MODEL	DEVELOP-MENT COSTS	EXPLANATION
Computerized self-study materials for transaction oriented law.	$215,000 per year.	$100,000 per year enhanced Internet support.	$70,000 to $100,000 per course for 7 courses* ($595,000)	Assume 60% of students self-study. (40% more than with paper-based self-study materials.)
Computerized licencing exams (This assumes computerized delivery and grading.)	Reduced marking costs, $40,000 per course per year ($240,000). Reduced invigilation costs of $1,000 per exam ($8,000)		$50,000 per course for 7 courses ($350,000).	The invigilation costs in the new model are based upon $20 per student per exam.
NET EFFECT:	$363,000		$945,000	Payback period of approximately 2.6 years.
Skills during articling:				
Targeted skills development during articling.		Additional marking $50,000 per year	$10,000	
NET EFFECT:		$50,000	$10,000	

*Note: The very substantial development costs for these learning materials could be largely offset by revenue generated by the sale of materials through CLE, and by the use of the materials in requalifications and discipline undertakings. Similarly, computerized examinations could assist in monitoring competence. If both materials and examinations are computerized at the same time the estimated cost per course is $120,000.

II. STATUS QUO

Costs would be the same as for the current Bar Admission Course, except for the increased costs that would result from the addition of any of the optional components, such as the computerization of self-study materials and/or examinations.

III. 12 WEEK SUMMER SCHOOL MODEL

COMPONENT	REDUCTION IN COSTS FROM THE CURRENT MODEL	INCREASED COSTS FROM THE CURRENT MODEL	DEVELOP-MENT COSTS	EXPLANATION
Reduction in program weeks from 20 to 16.	$200,000 per year		$240,000	16 weeks is based upon the 12 week phase 1 plus the optional study session prior to the exams.
Licencing Exams	$160,000 per year			Exam costs reduced by half. Exams are 14 h versus 28 h.

IV. OPTIONS AVAILABLE WITH MODELS

COMPONENT	REDUCTION IN COSTS FROM THE CURRENT MODEL	INCREASED COSTS FROM THE CURRENT MODEL	DEVELOP-MENT COSTS	EXPLANATION
Additional delivery sites		$150/section/day in the new site - rental costs; $2,000/week additional staffing costs per site		The staffing costs assume the complement remains constant, but staff are moved to the other sites during the delivery
Self-study materials				See the chart for the proposed model.
Pre-testing out of elements of the course				Costs of tests balanced by fewer students to teach.

COMPONENT	REDUCTION IN COSTS FROM THE CURRENT MODEL	INCREASED COSTS FROM THE CURRENT MODEL	DEVELOP-MENT COSTS	EXPLANATION
Delegating the BAC responsibility to another body		$1,000,000 per year in additional organizational costs.		Presumably this would be a subsidiary body of the Law Society, and would need its own administrative structure.
Accreditation	Unknown impact on students costs.	$800,000 per year (in lieu of the cost of the current BAC components of the Department of Education)		The accreditation unit's costs would presumably be borne by the Law Society, while the course costs are borne by the students.
Summative Evaluation	Unknown impact on student costs.			Presumably, the Law Society could run this as a break even activity, but the students would pay market rates to the private providers.

APPENDIX II

Selected Tables from the York University Survey
of Members of the Junior Bar

Table 2: Professional Skills Performed Regularly at Work

skill	percentage* reporting skills at least once***
drafting	74
correspondence	16
negotiation	43
clients (dealing with)/interviewing	42
research	33
arguing, please, and other court work	60
file (case) management	4
analytical	7
business law-related skills	8
consulting/advising	13
title searching	17
discoveries/disclosures	4
trust accounting	4
separation/custody/etc.	4
boards and tribunals	4

* based on 515 interviews

** Many lawyers listed the same skill for more than one area of practice. For example, a lawyer who practised civil litigation and family law might have identified negotiating, drafting, and arguing for both areas of practice.

Table 5: Overall Rating of Phase One, Phase Two, and Phase Three

	(percentages)		
rating/Phase	Phase One*	Phase Two**	Phase Three***
very well	6	54	18
well enough	35	34	50
not very well	38	8	24
not at all	21	4	8
total	100	100	100

* based on 495 responses
** based on 502 responses
*** based on 507 responses

Table 6: General Classification of Critical Comments about Each Phase

	(percentages)		
problem/Phase	Phase One*	Phase Two**	Phase Three***
overall criticism	45	12	48
specific criticism	12	21	19
not practical enough	28	17	26
not in area that lawyer practises	1	46	6
other	2	4	
do not remember	12	-	1
total	100	100	100

* based on 291 responses, only asked of those who were critical of the Phase
** based on 57 responses
*** based on 160 responses

Table 7: Positive Aspects of Each Phase

positive aspect	Phase One*	Phase Two** (percentages)	Phase Three***
drafting	6	5	1
client contact/interviewing	7	3	-
research	-	5	-
arguing/court work	7	7	-
procedure review	-	-	5
substantive area	-	-	21
materials	-	-	38
professional responsibility	13	-	1
role of principal/rotation	-	10	-
the practical aspects	6	55	8
other specific comment	8	10	1
overall positive comment	3	-	9
other type of comment	4	3	5
nothing was positive	14	2	8
do not remember	22	-	1
total	100	100	100

* based on 462 responses
** based on 492 responses
*** based on 488 responses

Table 8: Ratings of How Well Prepared Lawyers were for Activities in the Law Society's Definition of Competency at their Point of Call to the Bar

	percentage distribution*				
activity	very well	well enough	not very well	not at all	total
interviewing clients	25	54	17	4	100
legal research	29	37	23	11	100
negotiation	8	40	39	13	100
alternative dispute resolution	5	23	42	30	100
advocacy	11	53	30	6	100
oral communication	16	57	23	5	100
legal writing	19	53	21	7	100
business correspondence	13	45	28	14	100
time management	8	30	38	24	100
recognizing when to refer	16	48	21	15	100
practice management	7	30	44	19	100
recognizing a conflict of interest	37	55	7	1	100

* based on 515 interviews

APPENDIX III

BAR ADMISSION REFORM FEEDBACK FORM

Raw data of responses (with brief summary comments) from approximately 50 individuals who were:

(1) Partners/Associates in law firms with less than 5 lawyers. (5)
(2) Partners/Associates in law firms with 5-10 lawyers. (2)
(3) Partners/Associates in law firms with 10 or more lawyers. (12)
(4) Sole Practitioners. (11)
(5) Members not engaged in private practice. (15)
(6) Law Professors. (1)
(7) BAC Students. (5)
(8) LL. B. Students. (1)

1. Do you believe that in a future model of the BAC there should be greater focus on the teaching and assessment of:

20 respondents chose:	lawyering skills
0 respondents chose:	knowledge of substantive law
28 respondents chose:	both lawyering skills and knowledge of substantive law should be equally prioritized

More emphasis on skills, but substantive law is still important.

2. Do you believe that in a future model of the BAC there should be:

0 respondents chose:	the teaching and assessing of skills and knowledge of substantive law through traditional lectures and written exams
18 respondents chose:	the teaching and assessing of skills and knowledge of substantive law through a focus on legal transactions with performance-based assessment
33 respondents chose:	the teaching and assessing of *skills* through a transactional approach, and the teaching and assessing of *substantive law* through traditional lectures and written exams

Focus on transactions, but retain some element of lectures and seminars.

3. Do you believe that in a future model of the BAC there should be:

30 respondents chose:	one phase where skills and knowledge of substantive law are taught and assessed together
18 respondents chose:	separate phases which focus on skills and knowledge of substantive law respectively

Split opinion, but one phase is better than two.

4. Do you believe that in a future model of the BAC there should be instruction provided by the Law Society for:

14 respondents chose:	the skills focussed portion of the course
1 respondent chose:	the substantive law portion of the course
30 respondents chose:	both portions of the course
3 respondents chose:	neither the skills focussed portion or the substantive law portion

Only 6% want the LSUC out of BAC education.

5. If the Law Society were to provide instruction in a future model of the BAC, do you believe that attendance at instruction should be mandatory at:

9 respondents chose:	the skills focussed phase
1 respondent chose:	the substantive law focussed phase
0 respondents chose:	both phases
17 respondents chose:	neither phase should be mandatory, students should be able to choose whether they wish to attend

Mandatory attendance, only when necessary to teach skills.

6. Do you believe that in a future model of the BAC, instruction for the substantive law portion of the course should be offered:

14 respondents chose:	on an ongoing basis throughout the entire BAC course, on evenings and weekends, including during articling, or
26 respondents chose:	in lectures and seminars in a separate phase offered in a similar format to the current Phase Three, or
16 respondents chose:	both

Over 50% want some flexible learning opportunities for students, but over 75% want lectures and seminars available.

7. Do you believe that in a future model of the BAC, instruction should be provided in the form of:

24 respondents chose:	self study written material
22 respondents chose:	self study material available on computer to the profession
34 respondents chose:	traditional seminars and workshops
15 respondents chose:	traditional lectures
10 respondents chose:	lectures provided on video
21 respondents chose:	instruction provided through computer technology (Internet, e-mail)
2 respondents chose:	other: please specify: "all of the above"

Provide a range of learning methodologies for the students.

8. Do you believe that a future model of the BAC should be structured so that students can access learning in a variety of ways including:

21 respondents chose:	providing students with opportunities to pre-test out of specific skill sections once they have demonstrated knowledge of the material on the exam (a common set of skill courses would be required unless students were able to demonstrate competence of skills through prior learning or achievement)
26 respondents chose:	providing students with opportunities for self study in sections of the course
21 respondents chose:	providing students with opportunities to take individualized exams through the use of computerized testing (students could choose when they wanted to take exams)
17 respondents chose:	providing students with opportunities to choose the area of law they wished to concentrate on in the skills section of the course (students would be taught and assessed within this area of law)
17 respondents chose:	providing students with opportunities to pre-test out of substantive/transaction oriented law courses

A variety of approaches are desired.

9. If instruction and assessment of skills were organized into streams in a future model of the BAC do you believe that these streams should be grouped according to: (check all that apply)

17 respondents chose:	areas of law
8 respondents chose:	advanced and basic streams
8 respondents chose:	barrister and solicitor streams
24 respondents chose:	they should *not* be organized into streams

Although over 50% support some version of streaming, a substantial minority have concerns about streaming.

10. Do you believe that in a future model of the BAC assessment of the substantive law portion of the course should take the form of:

34 respondents chose:	standardized comprehensive written exams
8 respondents chose:	individualized comprehensive exams administered by computer with questions randomly pulled from a pool of test questions
6 respondents chose:	students should be given a choice of the above

The BAC should continue to rely upon standard written examinations, although over 25% favour some use of computerized examinations.

11. Do you believe that in a future model of the BAC assessment of the substantive law portion of the course should take the form of:

28 respondents chose:	exams given at prescribed times only
9 respondents chose:	exams where students could sit each exam independently and could start taking the exams as soon as they register in the BAC.
10 respondents chose:	students should be given a choice of the above

Most favour examinations only at prescribed times.

11. Do you believe that a future model of the BAC should:

20 respondents chose:	adopt a pass or fail assessment policy on both skills and knowledge of substantive law
13 respondents chose:	adopt a graded assessment policy on both skills and knowledge of substantive law

13 respondents chose: adopt an assessment policy where the student accumulates points throughout each phase of the BAC (allowing students to balance their strengths and weaknesses) and a minimum number of points would be required to pass each section in order to successfully complete the BAC

No consensus regarding the best approach to overall evaluation.

12. Do you believe that in a future model of the BAC:

20 respondents chose: articling should take place *before* all exams are successfully completed
13 respondents chose: articling should take place *after* all exams are successfully completed
10 respondents chose: articling and exams could take place at the same time if the student chose (if students start completing computer administered exams as of the point they register in the BAC they would be free to complete them on their own schedule thereafter, including during articling)
12 respondents chose: articling and exams should *not* occur at the same time (if students start completing computer administered exams as of the point they register in the BAC they would be free to complete them on their own schedule thereafter, *except* during articling)

No consensus on when the examinations should occur, although the strongest support is for examinations after articles.

12. Do you believe that a future model of the BAC should be offered at:

26 respondents chose: a location in each city in which an Ontario law school is located (i.e.,Windsor, Ottawa, London, Kingston, Toronto)
16 respondents chose: a location in London, Ottawa, and Toronto as is currently the case
5 respondents chose: at accessible locations throughout the province (by any means and at any cost)

The BAC should be offered in the law school cities.

13. Do you believe that a future model of the BAC should be offered:

34 respondents chose: directly by the Law Society, or
13 respondents chose: the Law Society should delegate a subsidiary organization to deliver the course, but retain control over the licensing exams, or
2 respondents chose: the Law Society should accredit other educational bodies to deliver the "accredited " bar admission course

A majority support the Law Society's ongoing delivery of the BAC.

14. Do you feel that the Law Society should initiate and examination of the feasibility and desirability of implementing limited licensing in Ontario.

20 respondents chose: Yes
24 respondents chose: No

Even the study of limited licensing will raise concerns.

15. Are there any additional components you believe should be incorporated into a future model of the BAC to ensure that competence, accessibility, equity, and affordability are achieved by this reform? (Please attach additional paper.)

There should be no future model of BAC. Rather, throughout articling, the students should study on their own and sit exams scheduled throughout the articling term. Upon passing all exams, they would receive their license.

Students who qualify for admission to law school and then graduate from a law school should have the ability to practise as a lawyer. That means we should expect a low failure rate; however, many students graduate from law school without practical training or exposure to many substantive areas of law. Furthermore, law school education focuses more on cases or theory and less on statutes. This means the Bar ad course can play an important role in completing the education of students before they become practising lawyers. A course that teaches practical skills, requires exposure to a broad range of substantive law (i.e., from family to insolvency) and that links two areas together should be well received. It must, however, respect the students as adults and so should not be mandatory in all aspects – law school was not after all. If taught before articling, I also expect students and firms will have better experiences through that process. Finally, I add that it is my belief the articling period could be and ought to be shorter.

Any model of the BAC should comprise a section on the lawyer's role. For example, in tax law, lawyers are often asked to "paper" transactions. Should the lawyer "paper" the transaction without independent analysis, should documents be "back-dated", what do you have to know about the transaction?

Any model of the BAC should comprise sections on billings, docketing, alternative billing practises. Any model of the BAC should comprise a section on pro bono work and the legal aid program.

In addition, a future model should have a 3-5 year continuing legal education program combined with a mentoring program.

There must continue to be substantial participation by the practising bar in the delivery of the course. At the same time, there must be full time professional faculty to ensure quality of material/exams/teaching.

Entire BAC should be no more than one year. Standards as to quality of work done in articling, and need for more equality of experience.

Increased focus on both lawyering skills and knowledge of substantive law. Onus is on articling to convey both skills.

With traditional lectures and lectures on video model, there must be opportunity for students to pose questions (e.g., by e-mail).

Advanced courses should be available in substantive areas.

Individualized comprehensive exams administered by computer with questions in a heuristic manner, focussing on student errors.

Articling and exams could take place at the same time, but limit the number of exams per month so as not to detract from the articling experience.

Offer BAC in a location in Northern Ontario.

Current Phase One was a waste of time and resources–it could be covered in a week. Should be eliminated. Content is patronizing for students, especially those who have legal work experience (opt out?). Could be a quick pre-articling pre course funded by those firms who believe it better prepares their students for articles.

I support a formal mandatory CLE requirement for the first two years of practice, but programs would have to be accessible to the underemployed. I like the idea of specialized barrister training .

I think that Bar ads should be primarily substantive law. The report ignores the position of students coming in from out of province and needing some immersion in Ontario laws–mobility is already restricted enough in our profession, don't make it worse at the law school level.

Consider interspersing teaching weeks during articles.

Current Phase Three prior to articling would have been terrific for students and firms alike, giving everyone the substantive law to appreciate practical problems and develop skills.

Labour employment law should be part of Phase Three.

Current Phase Three is not academically demanding–teach more of everything in less time.

Articling principals should receive 1-day training, and students should have an external mentor. My principal was awful and indifferent to my education. No evidence principal criticisms are dealt with by LSUC–criticisms should be taken seriously.

Also, insufficient opportunity for principals to flag students who are incompetent to LSUC.

Bar Ad students must have access to their exam to appreciate and correct their mistakes.

Current exams are poorly drafted, and there is no opportunity for students to comment on questions. They should be more professionally developed.

Could liaise with other provincial law societies to develop exam/question databanks (at least in federal areas – bankruptcy, tax, and cut expenses.)

If current Phase One is kept, the Professional Responsibility course in Phase Three should be incorporated into it fully, and the exam should be in Phase One, otherwise students are ethically ill-prepared to article (one question doesn't suffice!).

The list of what is currently in Bar Ads is inaccurate in my experience: There is no ADR, no criminal evidence, no will drafting, which is a major gap.

There should be more advanced sections like the Advanced Civil Litigation course, and students should be able to take all advanced sections if they quality and want to.

Starting Up Your Own Practice seminar in December was worthwhile for everyone, and could be incorporated into Professional Responsibility course.

Dislike law school summer model only because of logistics. Students from law school won't meet as many people from other schools (their future peers). No consideration given to out-of-province students, and people moving cities to article. A huge percentage of students would want to do Bar ads at U of T; do U of T students have a first right of refusal? Should also, therefore, hold course at Osgoode Hall.

Being able to focus on substantive law before articling would be good, since after articling many students are distracted with job searching or working to make ends meet. I bet students with jobs and salaries during Phase Three fare better than others, which is very unfortunate and unfair. I would also support delaying when articling placements are made so students articling at big Bay Street firms don't simply ignore criminal and family law, and everyone is more open-minded to other areas of practice. Corporate lawyers still have to deal with DUI clients! Also, as we have seen, career paths change dramatically all the time!

I went to law school and avoided criminal law, knowing I'd learn it at Bar Ads. I also ignored Labour and Employment law, and have no grounding in that area. Keep the same substantive courses without letting students avoid areas.

Doing an extended course prior to articles will be financially difficult for many students-- during the summer, after second year law school, they will have to earn enough money for 13, rather than 8, months.

I think the "self-study month" would be a waste of time – exams should be available to be written immediately after the course, or during articles (perhaps one per month), i.e., let people fast-track. Self-study, if it is in place, should be after articles so students can approach their firms for advice on material if exams are after articles.

Law schools across Canada must retain their autonomy – the marketplace (i.e., prospective students) is already requiring more practical law school courses. LSUC should stay out of it.

Being called in December would be an excellent change, so you would be in the right year upon moving to another province.

Revise course based on student criticisms and comments also, or are same always improperly ignored?

Schedule one exam per month, maximum, while articling, but let students try to complete all exams prior to articling.

My proposed schedule would be much more intensive: Professional Resp. - 1 week, Professional Skills - 4 days (in Phases One and Two), Practice Management - 1 week, Professional Skills (Phase Three) 3 days.

Don't bore students to death.

Is there no demand for Bar Ads to be taught in the North? Could county law societies assist in invigilating exams?

I oppose the Bar Ad course being taught in French–a waste of resources and the cause of excessive logistical problems.

Compact the time needed to complete the BAC and to get called to allow students to survive financially.

Encourage more firms to take and pay for articling students, or else make hiring an articling student a mandatory requirement for a five-or-more-lawyer firm.

Have a system of subsidy so articling students do not work for free.

Allow students the greatest flexibility in testing situation to allow students who are not examination writers to pass the BAC.

Provide a bigger labour/employment law overview-- either in public or corporate sections-- given that 22.95 per cent of lawyers practice in that area.

Make equity concerns, i.e., discrimination, legal aid, a mandatory, not optional, attendance day or as part of the BAC.

Entire BAC should be no more than one year long.

Standards as to quality of work done in articling need more equality of experience.

Time for skills study during articling given by Law Society, i.e., two days per month.

I'd say that the multiple choice Bar Ad exams were surprisingly difficult, and are a fair way to test.

Could pass some cost of Bar Ads to articling firms – perhaps as a percentage of the salary students will be paid while articling.

Schedule one exam per month, maximum, while articling, but let students try to complete all exams prior to articling.

My proposed schedule would be much more intensive: Professional Resp. - 1 week, Professional Skills - 4 days (in Phases One and Two), Practice Management - 1 week, Professional Skills (Phase Three) 3 days.

Don't bore students to death.

Is there no demand for Bar Ads to be taught in the North? Could county law societies assist in invigilating exams?

I oppose the Bar Ad course being taught in French–a waste of resources and the cause of excessive logistical problems.

Set a high standard, not the current everyone passes scenario.

Do not agree with computer administered/marked exams.

Offer BAC in London, Ottawa and Toronto, but in law schools, to lower the cost.

The present model is the best. Allow the student (as well as the practitioner) to have access to the substantive and transactional training materials prior to Phase One and articles.

Design and provide more transactional/skills material. (Practitioners could benefit.)

Allowing pure computer/self examination promotes the paralegal alternative (i.e., promotes the paralegal right and competence to practice).

Beware of educational consultants.

If we examine people, we should fail those who don't pass. Don't relinquish control of education.

Don't force students to get computers (some cannot afford them).

Don't accommodate disabilities that should preclude you from being a lawyer. I'm not saying we ought not to accommodate certain disabilities, but, for example, if someone cannot think quickly and requires more time to write examinations, I doubt that should be accommodated.

After yesterday's meeting [BAC Reform consultation meeting with BAC instructors], it is clear that the LSUC is in the business of licensing dreams: It is my dream to be a lawyer, so I can be one --competence be damned! Everyone knew going in where the BAC was held, that should be a factor in a student's planning and budgeting. Do students only have a right to be a lawyer and no responsibility for getting themselves there? I pity the good students who are painted with the same brush as those who get pushed through. Apparently, although my life has been full of disappointments, those who come behind will never have to worry about failures. This is all very sad.

Tutors -- pay them to help the struggling students.

More faculty members on staff.

More time on supplemental examinations - 1 hour helps!

Allowing students to preview materials is a good idea for articling, and to become somewhat familiar with substantive law and procedures.

Keep tabs on articling principals so that they give students a meaningful articling experience.

Keep letting students view examinations they wrote.

Don't make everything a mystery. If you can tell people what they need to know, they will learn it.

The Bar Admission Course should be skills-oriented for those who wish to practise law. Many law school graduates do not become barristers and/or solicitors offering such skills to the public.

Through graduated or limited licensing, the BAC should be the first step on a continuing program of professional education. The law, the procedure, the forums, the methods of practise are continually changing and mandatory continuing education and even requalification is necessary to ensure our members maintain current levels of competence in the field(s) in which they choose to practice.

As an instructor/marker in legal research and writing, I've heard the BAC students whining time and time again. However, I firmly believe there is validity in the BAC as it presently stands! The students think they know everything, but, in fact, when we are marking, we see how little they really do know. To allow students to pick and choose when they write exams and what areas those exams will cover, etc., is a travesty.

Other professions have formal entrance exams where students are required to attend and sit the exams. How will the BAC monitor who, in fact, is pre-testing out on computerized exams if that is the avenue we ultimately take?

Mandatory attendance and exams. Mandatory passing of exams, no special consideration as per Strosberg's 27. Students should be required to attempt answers to all questions to pass exams. Students must show bare working knowledge of areas of law covered, even if they do not plan to practise in that area.

Cost is a big concern for law graduates. It should be determined whether such skills and substantive teaching can be done equally effectively by private business (i.e., U.S. bar review analogy) at a lower cost.

Has the Law society learned about the effectiveness of the bar admission course over its many decades (by surveys)? This would be useful.

The skills on practical component should be a requirement in law school to perhaps decrease the amount of scrutiny at the licensing step in becoming a lawyer– this would require co-operation of the law schools across Canada to implement standards such as those in the U.S.. (American Association of Law Schools and American Bar Association.)

You should keep in mind that it is unlikely that students with inadequate "skills" will actually be failed – ever.

There should be more flexibility for students, but this should be done without watering down substantive content.

BAC is very poor at assisting in developing skills. Perhaps this part of the program should be integrated with articles so that students can have the direct assistance of the principal as well as the BAC instructors to enhance skills.

Do not accredit other educational bodies to deliver the "accredited bar admission course" – the advantage of the BAC is that it is taught by practitioners.

Lectures could be delivered via cable to students outside London, Ottawa and Toronto.

APPENDIX IV

From the complaints database, we have the following information with respect to the most frequent causes for complaints against lawyers recently called to the bar. The numbers are the number of complaints in this category in 1997, and the figures in parentheses are the rankings for the group indicated.

Area of Complaint	Sole Practitioner		Partner, Employee, Associate	
	0-5 Years	6-10 Years	0-5 Years	6-10 Years
Termination of retainer	43 (1)	112 (7)	26 (2)	74 (8)
Fees	33 (2)	190 (2)	24 (4)	125 (2)
Rule 13 - Fulfilling Financial Obligations (for Self & Client)	31 (3)	240 (1)	19 (7)	104 (4)
Negligence	25 (4)	142 (4)	25 (3)	105 (3)
3rd Party Complaint	23 (5)	188 (3)	46 (1)	145 (1)
Delay	20 (6)	119 (6)	19 (7)	103 (5)
Failure to Communicate	20 (6)	111 (8)	20 (6)	69 (9)
Rule 2 - Unsatisfactory Practice	20 (6)	142 (4)	23 (5)	85 (6)
Client's Instructions not Followed	17 (9)	84 (9)	15 (9)	75 (7)
Failure to Account	12 (10)	79 (10)	4	48
Rule 14 - Conduct towards other lawyers	10	43	11 (10)	32
Conflict of Interest	10	42	8	58 (10)

APPENDIX V
SUMMARY OF CANADIAN BAR ADMISSION REQUIREMENTS

Province	Time	Description	Assessment
B.C.			
BAC	- 10 weeks full-time offered 3 times/year	- 5 skills, prof. resp., trust acct., law office mgmnt., 9 substantive law areas, 6 transactions	-2 open book exams and 4 skills assessments
Articles	- 9 months full-time		
ALBERTA			
BAC	- 3 weeks skills training near the start of articling - 5 weeks skills and substantive law training toward the end of articling	- 6 generic skills, 6 core practice areas, largely file-based with prof. resp. and problem solving emphasized throughout -9 weeks of BAC count toward the 12 month articling period -flexible start dates	- skills assessments in 3 skills and a series of 6 closed-book exams of 1 - 1-½ hours each
Articles	- 12 months full-time, or part-time on request within 2 years		
SASKATCHEWAN			
BAC	- 1 month in Aug. and 1 month in May (after articles)	- skills, substantive and procedural law	- 3 closed-book exams
Articles	-12 months (including BAC, full, or part-time within 2 years)		

Province	Time	Description	Assessment
MANITOBA			
BAC	- 32 weekly seminars during articles (mainly Fridays) from August to April	- substantive and procedural law and some skills	- 6 substantive law exams, every 6 weeks
Articles	- 11.5 months (incl. BAC) full or part-time		
ONTARIO			
BAC	- 4 weeks of skills training prior to articling - 14 weeks of skills and substantive and procedural law, transactions, after articling	- skills based Phase 1, 6 skills - Phase 3: 8 areas of practice, computer courses, prof. resp. & practice management.	- 9 substantive and procedural open book exams, and skills assessments
Articles	- 11 months (excluding BAC), full or part-time		
NOVA SCOTIA			
BAC	- 7 preliminary exams - 7 weeks of skills training (offered 4 times per year) - 1 weekend (Law Office Mgmt.)	- substantially skills	- 7 pre-bar admission exams (on substantive law) - skills assessment
Articles	- 12 months (incl. BAC), or part-time within 3 years		

Province	Time	Description	Assessment
NEWFOUNDLAND			
BAC	- 6 weeks (3 in Nov. and 3 in Feb.)	- skills, substantive and procedural law	- exams after each 3-week course
Articles	- 12 months (incl. BAC) full-time		
NEW BRUNSWICK			
BAC	- 4 sessions of 2 weeks each for all students during articles (Sept., Nov., Feb., May)	- skills based - 4 skills, 17 areas of substantive law	- pre-bar admission exams, one prior to each of 4 sessions
Articles	- 12 months (incl. BAC) full or part-time		

Province	Time	Description	Assessment
P.E.I. BAC Articles	- 1 week PEI bar admission course (Oct./Nov. incl. exam) - 7 week Nova Scotia bar admission course (offered 4 times per year) - 1 day Law Office Economics & Management - 12 months (incl. BAC) or part-time within 24 months	- 8 substantive law areas	- P.E.I. exam after P.E.I. course
QUEBEC Lawyers: BAC Articles Notaries: BAC Articles	- 6 months - 6 months (full-time only) 9 months (12 if at University of Montreal) - 6 months	- skills and substantive based - 6 skills and substantive and procedural law - basic notarial practice areas and skills	- 6 exams - intermittent exams during teaching term

Province	Time	Description	Assessment
YUKON			
BAC	- B.C. Course (10 weeks)	- see B.C.	- Yukon statute exams (3 hours)
Articles	- 12 months (incl. B.C. course), allows part-time articles		
N.W.T.			
BAC	- Alberta bar admission course (8 weeks)		
Articles	- 12 months (incl. Alberta BAC) full-time only		

APPENDIX VI

EXAMPLES FROM OTHER COMMONWEALTH COUNTRIES

New Zealand

Jurisdiction (Provider)	Post-degree: PLT (PLT = BAC)	Pre-admission Work Experience	Post-admission requirements to gain an unrestricted practising certificate
New Zealand (Institute of Professional Legal Studies)	PLT course (13 weeks)	Nil	- After admission students are eligible for a practising certificate. - solicitors can practise on their own after 3 years of legal experience in New Zealand - Barristers can practice on their own upon admission.

United Kingdom

Jurisdiction (Provider)	Post-degree: PLT (PLT = BAC)	Pre-admission Work Experience	Post-admission requirements to gain an unrestricted practising certificate
United Kingdom	PLT course (30 to 34 weeks)	- 2 year training contract - mandatory continuing legal education (20 days)	- Continuing Professional Development courses - 16 hours in first 3 years; and - 48 hours for each 3-year period thereafter

Hong Kong

Jurisdiction (Provider)	Post-degree: PLT (PLT = BAC)	Pre-admission Work Experience	Post-admission requirements to gain an unrestricted practising certificate
Hong Kong (City Polytechnic of Hong Kong, and University of Hong Kong)	PLT course (30 weeks)	2 years articles	*Solicitors* - 2 years limited practice - mandatory CLE for 3 years (during 2-year articles and 1st year of limited practice) *Barristers* - 1 year pupillage (6 months in training and 6 months limited practice)

Australia

Jurisdiction (Provider)	Post-degree: PLT (PLT = BAC)	Pre-admission Work Experience	Post-admission requirements to gain an unrestricted practising certificate
Queensland (Queensland University of Technology)	*Solicitors* - PLT course (31 weeks); or articles (2 years)	- 3 week placement included in PLT, or alternatively two years for those doing articles only	If PLT, then 1 year supervised employment plus Practice Management Course (see below) If no PLT, then Practice Management Course for 6 weeks run by Law Society costing about $700
	Barristers - attendance at court to report 10 cases - Bar Practice course 6 weeks		Barristers usually join the Bar Association, which requires members to complete a year's pupillage

Victoria (Leo Cussen Institute)	- PLT course (33 weeks); or - 1 year articles	Nil for those completing PLT, or alternatively 1 year for those doing articles only	- completion of a trust accounts seminar - graduates of Leo Cussen undertake to complete 6 months as an employee
South Australia (Pre-admission: School of Law University of SA) (Post-admission: Law Society)	PLT course (18 weeks) includes 6-week work placement	- 6 weeks work experience within the conduct of the course	- 1500 hours of paid employment plus 5 units of CLE at $300 per unit; or - 150 hours of unpaid work experience plus 8 units of CLE at $300 per unit

Jurisdiction (Provider)	Post-degree: PLT (PLT = BAC)	Pre-admission work experience	Post-admission requirements to gain an unrestricted practising certificate
New South Wales (The College of Law)	PLT course (15 weeks)	- 24 weeks practical experience, including 60 hours Continuing Professional Training	*Solicitors* - 2 years of restricted practice *Barristers* - 4-week Bar Reader's Course at $1,000 and 11 months of supervised practice
North Territory	No PLT	- 52 weeks of articles	Nil
Tasmania (Centre for Legal Studies, University of Tasmania)	PLT course (26 weeks)	- 52 weeks of articles	No requirements *Proposed Bill to amend the Legal Practitioners Act 1959 so that individuals rather than firms are issued with a practising certificate*
West Australia	PLT course (15 hours) within 52 weeks articles	- 52 weeks of articles	- 1 year of restricted practice

APPENDIX VII

ADMISSION TO THE BAR - U.S.A.

The basic requirements for admission to each U.S. bar are a law degree and passing the prescribed bar examinations. No state has articling, although Delaware and Vermont have, respectively, five and six month clerkship requirements.

The following 25 states and the District of Columbia each have a mandatory bridge-the-gap requirement, with the five-day New Jersey Skills and Methods course being the most substantial teaching program. All of the following 25 states, except Alaska, Maryland and New York, also have a 10 to 15 hour annual mandatory continuing legal education requirement for the entire profession. New York expects to introduce a mandatory continuing legal education requirement by the end of 1998. The District of Columbia does not have a mandatory continuing legal education requirement.

Alaska	Attend a three-hour presentation on attorney ethics.
Arizona	Completion of state bar's two-hour professionalism course within the first year of admission.
Colorado	One day professionalism course within the first three years of admission.
Delaware	Five-month clerkship, and five single day seminars within four years of admission. Topics covered are family law, civil litigation, lawyer-client relations, wills and trusts, and real estate.
District of Columbia	Within 12 months after admission must complete a one-day course on the D.C. Rules of Professional Conduct and on D.C. practice.
Florida	Mandatory three-day basic skills course, including instruction on discipline, ethics, and responsibility to the public, must be completed within 12 months of admission to the Florida Bar, and may be completed eight months prior to admission. Topics include civil practice, criminal practice, disciplinary procedures, ethics, law office economics, real estate, court practice and miscellaneous topics.
Georgia	One-day mandatory bridge-the-gap course must be completed prior to the first anniversary of admission.
Idaho	Within 12 months of admission, complete a special 1.5-day practical skills seminar.
Indiana	Completion in an approved law school of two cumulative semester hours of legal ethics or professional responsibility.
Kentucky	Two-day mandatory basic skills course to be completed within 12 months of admission.
Maryland	A one-day course in professionalism between the time applicants pass exams and when they are admitted to the Maryland Bar.
Missouri	Complete three hours of continuing legal education in the 12 months before or after admission, in the areas of professionalism, ethics and malpractice.

Nevada	Mandatory bridge-the-gap course to be completed in the first year of admission.
New Hampshire	Practical skills course must be completed during first two years of practice.
New Jersey	Applicants must present evidence of satisfactory performance in a law school course on ethics. The five-day Skills and Methods course is a post bar admission requirement. The topics covered are professional responsibility, family law, real estate, wills and probate, and either of civil or criminal trial practice. Course requirements may be completed over a three-year period.
New Mexico	All members newly admitted to the practice of law must complete 10 hours of practical skills courses during the first two years.
New York	A mandatory bridge-the-gap requirement of 32 hours within the first two years of practice, including specific requirements in ethics, professionalism, skills, practice management and selected practice areas.
North Carolina	Nine hours of practical skills courses in each of the first three years of practice.
Ohio	At law school, applicants must have successfully completed a course of not fewer than 10 classroom hours in legal ethics. These applicants also must provide a certificate from a law school or a continuing legal education sponsor certifying receipt of at least one hour of instruction on substance abuse, including causes, prevention, detection and treatment alternatives.
Oregon	New admittees must complete 15 hours of continuing legal education, including 10 hours of practical skills and two hours of ethics within one year of admission.
Rhode Island	Completion of training course sponsored by Rhode Island Bar Association or a three-month clerkship prior to admission or within one year of admission.
South Carolina	File proof of eleven trial experiences at any time after completion of one-half of the credits needed for graduation from law school. Must complete a bridge-the-gap course.
Texas	Four-hour course on professionalism within one year of admission.
Utah	New admittees to the bar must complete, within two years of admission, a New Lawyer Continuing Legal Education program.
Vermont	Six months of law office experience (in addition to the regular 20-hour mandatory continuing legal education requirement over the first two years of admission).
Virginia	One-day new admittees course, including law practice as a business and obligations to the courts and clients.

The following 16 states have a 10 to 15 hour annual mandatory continuing legal education requirement for the entire profession, but no special bridge-the-gap requirement.

- Alabama
- Arkansas
- California
- Iowa
- Kansas
- Louisiana
- Minnesota
- Mississippi
- Montana
- North Dakota
- Oklahoma
- Pennsylvania
- Tennessee
- West Virginia
- Wisconsin
- Wyoming

The following nine states have no bridge-the-gap or mandatory continuing legal education requirement.

- Connecticut
- Hawaii
- Illinois
- Maine
- Massachusetts
- Michigan
- Nebraska
- South Dakota
- Washington (the regular 15 hour mandatory continuing legal education requirement is waived for the first two years)

APPENDIX VIII

The MacCrate Report —

Legal Education and Professional Development — An Educational Continuum Report of the Task Force on Law Schools and the Profession: Narrowing the Gap

Assessing Transition Education in the U.S.

The inadequacy of the existing programs of transition education in this country becomes apparent when they are compared with comparable programs in Commonwealth jurisdictions. In Appendix E to this Report, we briefly describe six Commonwealth programs for instructing new lawyers in professional skills and values. Although these programs provide a range of different models, they have much in common with each other that sets them apart from their United States counterparts.

Unlike the typically cursory programs in the United States, the Commonwealth programs range in length from ten weeks to as many as seven months. And, rather than focussing on imparting additional substantive knowledge, as do many of the bridge-the-gap programs, the Commonwealth programs generally focus on developing lawyering skills such as legal research, drafting, negotiation, interviewing and counselling, and trial advocacy. Students work on developing these skills in the context of specific problems or transactions, such as a matrimonial, personal injury or criminal litigation, a real estate conveyancing, or an incorporation. While students may occasionally attend lectures or observe demonstrations, these programs center on students' active involvement in particular tasks, ranging from participation in simulations or role playing exercises to drafting various documents. Feedback is provided on an ongoing basis, often by professional instructors or by trained volunteers.

Unlike the Commonwealth programs, U.S. programs have not tested the attendees to determine how much of the material was absorbed. The New Jersey Practical Skills course, which is a requirement for admission to the state Bar, requires participants to complete homework exercises which are graded and are a condition of passing the course. The Virginia program also has required homework assignments during the first year. None of the programs otherwise test participants with an eye towards assessing whether they attain a level of minimal competency.

In contrast to the Commonwealth programs, many American programs have not avoided the pitfalls warned against in the Kestin Report, and have become "overly analytical [and] too substantive." Too many bridge-the-gap programs are like bar review courses, with a smorgasbord of substantive law force-fed in a relatively short period of time. Yet, at least three substantial practical problems confront those who seek to develop programs of practical skills instruction in the United States of comparable quality to those in Commonwealth jurisdictions.

The first problem is one of funding. Most of the Commonwealth programs receive at least some government funding. Others have access to funds not available in the United States, such as the income from lawyers' trust accounts. In this country the programs are often funded solely by tuition paid by the new attorney. It would be difficult to persuade new attorneys, many burdened with debt from seven years of graduate and undergraduate education, to defer practice while they pay for fairly expensive post-graduate training. This difficulty is enlarged when the additional training is of a kind that is of little relevance to the practice in which the new lawyer plans to engage.

A second problem is that many states admit a large number of new lawyers each year — far more than even the largest of the Commonwealth jurisdictions. Not surprisingly, the sole example of a meaningful post-graduate skills-training program in this country, the Washington Practical Skills Course, has limited enrollments and can handle only a fraction of the admittees to the Washington Bar.

Finally, there is the administrative problem. The Commonwealth programs are all administered in whole or part by central associations. For example, the Ontario program is administered by the Law Society of Upper Canada. In marked contrast, the programs in this country are offered by a myriad of providers even within a single jurisdiction. Some are subject to the approval of a local bar association, others are not. Many programs are run by independent CLE providers who must turn a profit to stay in business.

APPENDIX IX

Examples of Material to Be Covered in Substantive/Transaction Oriented Law Examinations

The following examples of transactions that could be examined within the areas of law indicated are based upon the data from the Law Society of Upper Canada's Membership Information Form with respect to areas of practice and common tasks within each area. It would be possible to provide computer based examinations that could be taken by students on an individual basis after they have studied the appropriate materials. The student's examination would be constructed from a number of randomly selected questions from a large public question bank. Both the materials and the examinations could be made available to existing practitioners.

I. Wills and Estates Law:

Tasks/Skills:

- drafting a will
- drafting a Power of Attorney for Property
- drafting a Power of Attorney for Personal Care
- drafting a family trust
- advising testator regarding estate matters
- advising executor following death of testator
- advising regarding tax planning
- procedures in estate administration (eg. applying for probate)
- procedures regarding estate disputes (eg. filing of appropriate forms)
- advising regarding a mentally incapacitated person
- estate conveyancing (eg. document preparation where real estate involved)

Areas identified:

Estate Planning, including Will Drafting
Estate Administration and Litigation
Living Wills and Powers of Attorney

II. Real Estate Law:

Tasks/Skills:

- advising regarding standard Agreement of Purchase and Sale in a residential resale transaction
- advising regarding builder's Agreement of Purchase and Sale in a new home transaction

II. Real Estate Law (Continued):

- advising regarding Agreement of Purchase and Sale in a commercial property transaction
- advising regarding the suitability of Vendor's survey
- searching title, identifying title defects and drafting requisition letter
- identifying and advising regarding searches and inquiries appropriate for transaction (in addition to title search)
- explain the pros and cons of title insurance for both residential and commercial transactions
- drafting deeds
- drafting mortgage documents
- completing statement of adjustments
- preparing undertakings and other closing documentation
- advising regarding landlord/tenant matter (e.g. terminating tenancy in residential transaction)
- drafting residential lease
- drafting commercial lease

Areas identified:

Residential Resale Transaction
Residential New Home Transaction
Landlord/Tenant Disputes
Commercial and Residential Leases

III. Family/Matrimonial Law

Tasks/Skills:

- completing a family property statement
- determining child support (using government tables)
- drafting a separation agreement
- drafting an affidavit in support of an interim motion for:
  - custody
  - access
  - support
- advising client regarding
  - property division
  - custody
  - access
  - support
- advising client regarding tax consequences especially in regards to support
- negotiating terms of settlement regarding property division, custody, access or support

III. Family/Matrimonial Law Continued:

Areas Identified:

Custody, Access and Support
Divorce
Domestic Contracts and Property Division

IV. Civil Litigation

Tasks/Skills:

- drafting a retainer
- drafting a statement of claim in action respecting:
  i) negligence
  ii) breach of contract (e.g. insurance matter), or
  iii) wrongful dismissal
- drafting a statement of defence (and counterclaim if appropriate) in action respecting:
  i) negligence
  ii) breach of contract (e.g. insurance matter), or
  iii) wrongful dismissal

- drafting a third party claim
- drafting affidavit of documents
- drafting material for a motion
- drafting the order granted
- drafting an offer to settle
- drafting a judgment after trial

Areas Identified:

Personal Injury Litigation
Insurance Litigation
Commercial Litigation
Wrongful Dismissal Litigation

V. Administrative/Public Law

Tasks/Skills:

- identifying procedure for challenging administrative decision making at Federal level (e.g. immigration matter)
- identifying procedure for challenging administrative decision making at Provincial level (e.g. human rights matter or workers' compensation matter)
- judicial review: - preparing an application for judicial review

V. Administrative/Public Law (Continued)

- identifying and drafting grounds for judicial review
- preparing documents for judicial review at Federal Court level
- preparing documents for judicial review at Provincial Court level

- appeals: - preparing an application for leave to appeal (where appropriate)
  - identifying and drafting grounds for appeal
  - preparing documents for appeal at Federal Court level
  - preparing documents for appeal at Provincial Court level

- Charter challenges:
  - developing factual basis of a Charter challenge
  - determining and describing the nature of the Charter breach
  - determining the available remedies
  - drafting a statement of claim
  - preparing a work plan
  - preparing documents for a Charter application
- factums: - format and contents

Areas Identified:

Charter/Constitutional Law
Federal Court Review of Decisions of Federal Administrative Tribunals
Provincial Court Review of Decisions of Provincial Administrative Tribunals

VI. Corporate Commercial Law

16. Tasks relating to Incorporation

- advise re advantages and disadvantages of incorporating
- advise re advantages and disadvantages of federal vs. provincial incorporation
- draft articles of incorporation
- draft organizing by-laws and resolutions
- prepare corporate minute book

17. Tasks relating to Arrangements among Shareholders

- draft shareholders' agreement dealing with control of the company and events giving rise to a sale of shares such as first rights of refusal, buy-sells, puts and calls

18. Tasks relating to Ongoing Corporate Affairs

- draft notice of annual meeting of shareholders

VI. Corporate Commercial Law (Continued)

- prepare corporate minutes
- change number of directors, change year end or change corporate name
- draft resolution declaring a dividend in cash and in kind
- draft an amalgamation agreement and Articles of Amalgamation

19. Tasks relating to Purchase and Sale of Business

- negotiate and draft agreement of purchase and sale of shares
- negotiate and draft agreement of purchase and sale of assets
- advise on required procedures in a sale under the Bulk Sales Act
- advise on tax and commercial advantages and disadvantages of purchasing (or selling) shares rather than assets
- complete corporate steps necessary to carry through to completion a transaction for the purchase and sale of assets
- complete corporate steps necessary to carry through to completion a transaction for the purchase and sale of shares

20. Tasks relating to Partnerships

- draft partnership agreement
- prepare for registration a form of partnership
  i) declaration
  ii)dissolution

21. Tasks relating to Secured Transactions

- draft security agreement securing shares, inventory, book debts, equipment, intangibles, etc.
- draft a guarantee
- draft an indemnity
- draft a promissory note
- prepare a financing statement and financing change statement

22. Tasks relating to Income Tax

- advise and prepare documents re s. 85 rollover
- advise re tax appeal
- prepare a notice of objection
- advise clients regarding tax considerations in transactions involving the purchase and sale of shares and assets
- prepare a tax opinion letter to a client
- awareness of ethical obligations

VI. Corporate Commercial Law (Continued)

23. Tasks involving Debtors' and Creditors' Rights and Remedies

- procedure to collect an account (ie. unsecured debt) from receipt of account to final report to client including completion of all necessary court documents
- advise clients re enforcement of secured debt
- advise clients re mortgage enforcement (e.g. sale of real property under power of sale)
- advise clients re construction lien action
- advise clients re receivership and bankruptcy
- advise re Companies Creditors Arrangement Act (re: bankruptcy protection)
- prepare documents to instal a receiver
- prepare petition for bankruptcy (voluntary and involuntary, corporate and personal)
- negotiate with creditors

Areas Identified:

Incorporation Procedures
Shareholders' Arrangements
Ongoing Corporate Affairs - Corporate Changes, Corporate Governance, etc.
Purchase and Sale of Shares vs. Businesses
Partnerships
Secured Transactions
Income Tax Issues
Creditors' Rights and Remedies

VII. Criminal Procedure

Tasks/Skills:

- conduct initial interview with accused
- prepare for bail review
- prepare for preliminary hearing, including attendance at interviews with accused, witnesses, Crown Attorney and police
- prepare for jury trial, including preparation of relevant law, consideration and selection of jury and consideration of preliminary hearing evidence
- prepare appeal to Court of Appeal
- prepare for trial of summary conviction offence
- prepare for appeal of summary conviction offence by way of summary appeal

VII. Criminal Procedure Continued:

Areas identified:

Procedure from first interview of accused to preliminary hearing
Jury trials
Appeals to Court of Appeal
Trial of summary conviction offences
Appeals of summary conviction offences by summary appeal

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A debate followed.

Convocation took a brief recess at 10:45 a.m. and resumed with the Report on the Bar Admission Course Reform.

Ms. Ross reported that Model 4 addressed the problems on the issue of equity.

CONVOCATION ADJOURNED FOR LUNCHEON AT 12:00 NOON

The Treasurer and Benchers had as their guest for luncheon Mr. Dalton McGuinty.

CONVOCATION RECONVENED AT 2:00 P.M.

PRESENT:

The Treasurer, Aaron, Adams, Armstrong, Arnup, Backhouse, Banack, Bobesich, Carey, Carter, R. Cass, Chahbar, Cole, Copeland, Curtis, DelZotto, Eberts, Elliott, Epstein, Feinstein, Goodman, Gottlieb, Keenan, Krishna, Lawrence, MacKenzie, Marrocco, Millar, Murphy, Murray, Ortved, Puccini, Robins, Ross, Ruby, Scott, Stomp, Swaye, Wilson and Wright.

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IN PUBLIC

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CONTINUATION OF THE DEBATE ON THE REPORT ON THE BAR ADMISSION COURSE REFORM

It was moved by Mr. Krishna, seconded by Mr. Banack that Model 4 be amended by adding that one exam be at the beginning or during Phase 3 at the option of the student.

Lost

ROLL-CALL VOTE

Aaron	Against
Adams	Against
Armstrong	Against
Arnup	Against
Backhouse	Against
Banack	For
Bobesich	Against
Carey	Against
Carter	Against
Chahbar	Against
Cole	Against
Copeland	Against
Curtis	Against
DelZotto	Against
Eberts	Against
Elliott	Against
Epstein	Against
Feinstein	Against
Gottlieb	Against
Keenan	Against
Krishna	For
MacKenzie	Against
Millar	Against
Murphy	Against
Ortved	For
Puccini	Against
Ross	Against
Ruby	Against
Stomp	Against
Swaye	Against
Wilson	For
Wright	Against

It was moved by Mr. Wright, seconded by Mr. DelZotto that Option 3 from Model 4 be deleted.

Lost

It was moved by Ms. Backhouse, seconded by Mr. Carter and Ms. Ross that Model 4 be adopted.

Carried

ROLL-CALL VOTE

Aaron	For
Adams	For
Armstrong	For
Arnup	For
Backhouse	For
Banack	For
Bobesich	For
Carey	For
Carter	For
Chahbar	For
Cole	For
Copeland	For
Curtis	For
DelZotto	For
Eberts	For
Elliott	For
Epstein	For
Feinstein	For
Gottlieb	For
Keenan	For
Krishna	For
MacKenzie	For
Millar	For
Murphy	For
Ortved	Against
Puccini	For
Ross	For
Ruby	For
Stomp	For
Swaye	For
Wilson	For
Wright	For

It was moved by Mr. Ortved, seconded by Mr. Crowe that Alternative 2, the 12 Week Summer School Model be adopted.

Not Put

It was moved by Mr. Wilson, seconded by Mr. Adams that the Treasurer immediately create a task force to review and report to Convocation as to (1) Are there defined areas of legal knowledge which must be demanded as a pre-requisite to call to the bar? and (2) What are the deficiencies or problems which would be created by an entrance qualifying exam in the prescribed academic areas?

Lost

ROLL-CALL VOTE

Aaron	For
Adams	For
Armstrong	For
Arnup	Against
Backhouse	Against
Banack	For
Bobesich	For
Carey	Against
Carter	Against
Chahbar	For
Cole	For
Copeland	Against
Curtis	Against
DelZotto	For
Eberts	Against
Elliott	For
Epstein	Against
Feinstein	Against
Gottlieb	For
Keenan	Against
Krishna	For
MacKenzie	Against
Millar	Against
Murphy	Against
Ortved	For
Puccini	For
Ross	Against
Ruby	Against
Stomp	Against
Swaye	Against
Wilson	For
Wright	Against

It was moved by Mr. Swaye, seconded by Mr. Banack that recommendation #3 be deleted.

The Treasurer ruled the Swaye/Banack motion out of order.

The Backhouse/Carter/Ross motion to adopt recommendations #2 through #14 was voted on and adopted.

THE REPORT WAS ADOPTED

ROSEMARY NELSON MOTION

It was moved by Mr. Copeland, seconded by Mr. Millar that the Law Society calls for an immediate independent and international inquiry into the murder of lawyer Rosemary Nelson, who was killed by a car bomb outside her home in Northern Ireland on the 15th of March, 1999.

The motion was voted on and adopted unanimously.

REPORT OF THE LEGAL AID COMMITTEE

Mr. Armstrong presented the Report of the Legal Aid Committee which set out the recommendations to the Transitional Board of Legal Aid Ontario and the terms of reference for the new Legal Aid Committee.

THE ONTARIO LEGAL AID PLAN
RÉGIME D'AIDE JURIDIQUE DE L'ONTARIO

Legal Aid Committee
March 10, 1999

Report to Convocation

Nature of Report: For Approval

TABLE OF CONTENTS

The Legal Aid Committee met on March 10, 1999. In attendance were:

Committee members: Bob Armstrong (Chair), Heather Ross (Vice Chair), Tamara Stomp, Rich Wilson, Derry Millar, Marshall Crowe, Abe Feinstein, Gerry Swaye, Tom Carey and Carole Curtis.

Senior Management of OLAP: Bob Holden, Provincial Director, Deputy Directors George Biggar, Ruth Lawson and David Porter, Clinic Funding Manager, Joana Kuras.

OLAP Staff: Elaine Gamble, Communications Coordinator and Felice Mateljan, Executive Assistant.

The following items are for your approval:

1. Recommendations to the Transitional Board of Legal Aid Ontario

The Committee agreed that they would forward the following priority list of recommendations for consideration by the Board of Legal Aid Ontario.

- Full legal aid services should be extended to refugee claimants
- The hourly rate for lawyers working under certificates should be reviewed and appropriate increases provided in view of the fact that there has been no rate increase since 1987.
- The legal aid tariff needs to be reviewed and assessed in accordance with current needs.
- The financial eligibility guidelines need to be reviewed and changed. In 1995, the financial eligibility guidelines were tightened by approximately 23 per cent (the maximum allowable income and asset levels were lowered by 23 per cent). In 1997, there were further restrictions placed on the eligibility guidelines.
- Lawyers' accounts that were sent in after the December 1, 1995 amnesty from the six-month rule should be reviewed. The current policy is that these accounts will only be paid if the lawyer has provided written evidence of illness or incapacity which accounts for the delay in submitting the account.

2. Terms of Reference for the new Legal Aid Committee

1. The Legal Aid Committee shall keep abreast of all current issues in the provision of legal aid services and report to Convocation in regard to such issues.

2. The Legal Aid Committee shall report to Convocation its recommendations in regard to matters which should be brought to the attention of Legal Aid Ontario including:

-
- the scope of legal services provided to the disadvantaged people of Ontario;
- the manner of delivery of legal aid services to the disadvantaged people of Ontario;
- the funding of legal aid services in Ontario
- the financial eligibility criteria for people seeking legal aid services in Ontario;
- the rate of remuneration for persons providing legal aid services in Ontario;
- the impact of legal aid on the administration of justice and access to justice
- other issues as circumstances appear to suggest.

3. Reports to Convocation

The Law Society's nominees to the Board of Legal Aid Ontario shall report on a regular basis to Convocation.

The following items are for your information:

4. Area Committee Appointments

The Committee approved three new appointments to area committees as recommended by the Provincial Director: David Horwood and Stanley Edward Dudzic in Wentworth and Nathalie Gregson in Nippissing.

5. Financial Reports - December 1998

The financial reports for January 1999 are attached.

.....

It was moved by Mr. Armstrong, seconded by Mr. Wilson that the Report be adopted.

Carried

The Treasurer thanked Mr. Armstrong, the Committee members and the Legal Aid staff for all the work they had done.

THE REPORT WAS ADOPTED

MOTION - APPOINTMENTS

It was moved by Mr. Carter, seconded by Mr. MacKenzie that Abe Feinstein be reappointed to the Advisory Committee on Judicial Appointments (Ontario East and North) effective June lst, 1999 for a period of 2 years.

Carried

It was moved by Mr. Carter, seconded by Mr. MacKenzie that Dan Murphy be reappointed to the Advisory Committee on Judicial Appointments (Ontario South and West) effective June lst, 1999 for a period of 2 years.

Carried

REPORT OF THE PROFESSIONAL DEVELOPMENT & COMPETENCE COMMITTEE

Ms. Elliott spoke to the item dealing with the Working Group on County and District Libraries and the Phase II Report which would be before Convocation in April for consideration.

Report to Convocation

Purpose of Report:Decision Making

TABLE OF CONTENTS

TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Professional Development and Competence Committee ("the Committee") met on March 11, 1999. Committee members in attendance were Mary Eberts (Chair), Rich Wilson (Vice-Chair), Mike Adams, Kim Carpenter-Gunn, Susan Elliott, Jennifer Keenan, Ron Manes, and Helene Puccini. Staff in attendance were Scott Kerr, Sue McCaffrey, Janine Miller, Felecia Smith, Elliott Spears, Sophia Sperdakos, and Paul Truster.

2. The Committee is reporting on the following matters:
For Decision

    1. Competence By-law (By-law 24)
    2. Amendments to By-law 21
    3. Libraries Working Group proposal

FOR DECISION

COMPETENCE BY-LAW

1. Part II of the *Law Society Amendment Act, 1998* contains the new provisions that address professional competence. Over the coming months Convocation will be requested to consider and approve by-laws necessary to implement the competence provisions of the Act. Draft By-law 24, set out in Appendix 1 with annotations, addresses the procedures to be followed under sections 42 and 49.4 of the Act.

2. Section 42 of the *Law Society Act* provides as follows:

> *(1) The Society may conduct a review of a member's practice in accordance with the by-laws for the purpose of determining if the member is meeting standards of professional competence.*
>
> *(2) A review may be conducted under this section only if:*
>
> *(a) the review is required under section 49.4;*
>
> *(b) the member is required by an order under section 35 to co-operate in a review under this section; or*
>
> *(c) the member consents.*
>
> *(3) On completion of the review, the Secretary may make recommendations to the member.*
>
> *(4) The Secretary may include the recommendations in a proposal for an order.*
>
> *(5) A proposal for an order may include orders like those mentioned in section 44 and any other order that the Secretary considers appropriate.*
>
> *(6) If the Secretary makes a proposal for an order to the member and the member accepts the proposal within the time prescribed by the by-laws, the Secretary shall notify the chair or vice-chair of the standing committee of Convocation responsible for professional competence and the chair or vice-chair shall appoint an elected bencher to review the proposal.*
>
> *(7) The bencher who reviews the proposal may make an order giving effect to the proposal if he or she is of the opinion that it is appropriate to do so.*
>
> *(8) The bencher may include modifications to the proposal in an order under subsection (7) if the member and the Secretary consent in writing to the modifications.*

3. Section 49.4(1) of the Act provides as follows:

> *Subject to section 49.6, the chair or a vice-chair of the standing committee of Convocation responsible for professional competence shall direct that a review of a member's practice be conducted under section 42 if the circumstances prescribed by the by-laws exist.*

4. The competence scheme in the *Law Society Act* reflects two policies. The first is that, generally speaking, concerns about competence should be dealt with through remedial rather than disciplinary procedures, provided that such an approach will adequately protect the public interest.

5. The second is that the Law Society must have, and where appropriate use, the statutory authority to inquire into the competence of its members.

6. Implicit in these policies is the need for the Society to take a preventive approach to competence that will operate alongside the remedial, and in those circumstances where it is necessary, the punitive.

7. The integration of these policies requires that a balance be established between processes intended to assist members to improve their practice routines and those that will, in the public interest, compel members to improve or be held accountable.

8. The Professional Development and Competence Committee has considered a number of policy matters related to the drafting of by-laws necessary to implement the competence scheme. An annotated version of By-law 24 is provided so that Convocation will have the background to the Committee's considerations.

9. Convocation is requested to consider the motion containing draft By-law 24 and, if appropriate, to approve it.

AMENDMENT TO BY-LAW 21

1. Section 43 of the *Law Society Act* provides as follows:

> *(1) With the authorization of the Proceedings Authorization Committee, the Society may apply to the Hearing Panel for a determination of whether a member is failing or has failed to meet standards of professional competence.*
>
> *(2) The parties to the application are the Society, the member who is the subject of the application and any other person added as a party by the Hearing Panel.*

2. Convocation approved amended By-law 21 concerning the Proceedings Authorization Committee (PAC) on February 19, 1999. In drafting the by-law Elliot Spears anticipated that additions might be necessary as the Professional Development and Competence Committee developed policies relevant to the competence provisions of the legislation.

3. Appendix 2 contains the two motions for the proposed amendments to By-law 21. An annotated version of the proposed amendments to By-law 21 is provided so that Convocation will have the background to the Committee's considerations.

4. Convocation is requested to consider the motions containing the proposed amendments and, if appropriate, to approve them.

LIBRARIES WORKING GROUP REQUEST TO CONVOCATION

1. The Working Group on County and District Law Libraries has been meeting since December, 1998 to prepare the Phase II report, as directed by Convocation on October 23, 1998.The Working Group expects to present its report at the April, 1999 Convocation.

2. The working group has reported to the Professional Development and Competence Committee that there is an issue it believes should be considered by Convocation before the Phase II report is presented to Convocation in April. The working group seeks Convocation's approval to begin advertising forthwith for an Executive Director for the new library system. The Professional Development and Competence Committee agrees with the proposal for the reasons set out in the working group's report.

3. Convocation is requested to review the working group report set out in Appendix 3 and to approve the working group's request to advertise forthwith for an Executive Director for the new library system, the details of which are set out in the working group report.

APPENDIX 1

[ANNOTATED FOR DISCUSSION]

BY-LAW 24

PROFESSIONAL COMPETENCE

Exercise of powers by Professional Development and Competence Committee

1. The performance of any duty, or the exercise of any power, given to the Professional Development and Competence Committee under this By-Law is not subject to the approval of Convocation.

Delegation of powers and duties of Secretary: Director, Professional Competence

2. An officer or employee of the Society who holds the office of Director, Professional Competence may, subject to any terms and conditions that may be imposed by the Secretary, exercise the powers and perform the duties of the Secretary under,

(a) subsections 42 (3), (4), (5), (6) and (8) of the Act;

(b) section 8 of By-Law 21; and

(c) this By-Law.

INFORMATION

Requirement to provide information

3. (1) The Secretary may require a member to provide to the Society specific information about the member's quality of service to clients, including specific information about,

(a) the member's knowledge, skill or judgment;

(b) the member's attention to the interests of clients;

(c) the records, systems or procedures of the member's practice; and

(d) other aspects of the member's practice.

Notice of requirement to provide information

(2) The Secretary shall notify a member in writing of the requirement to provide information under subsection (1) and shall send to the member a detailed list of the information to be provided by him or her.

Time for providing information

(3) The member shall provide to the Society the specific information required of him or her not later than thirty days after the date specified on the notice of the requirement to provide information.

Extension of time for providing information

(4) Despite subsection (3), on the request of the member, the Secretary may extend the time within which the member shall provide to the Society the specific information required of him or her.

Request for extension of time

(5) A request to the Secretary to extend time under subsection (4) shall be made by the member in writing and not later than the day on which the member is required under subsection (3) to provide to the Society the specific information required of him or her.

Paragraph 9 of subsection 62(0.1) of the *Law Society Act* states that Convocation may make by-laws,

9. requiring members and student members or any class of either of them specified in the by-laws or specified by the Secretary, to provide the Society with information relating to the Society's functions under this Act.

When the Special Committee on Amendments to the Law Society Act considered issues related to competence in 1996 it prepared draft regulations that provided for, among other things, a written questionnaire that would be sent to members to complete. The questionnaire would ask the member to provide information relevant to the assessment of standards of professional competence.

Applying paragraph 9 of subsection 62(0.1), the Committee is recommending that the by-law contain authority to send out requests for information to the members related to the competence standards set out in section 41 of the *Law Society Act.*

The committee is of the view that the gradual introduction and use of information questionnaires will enhance the preventative component of the Law Society's competence mandate. Patterns of behaviour and professional practice can be extracted from the data gathered and used to inform all members on ways to improve their practices.

PRACTICE REVIEWS

Appointment of persons to conduct reviews

4. The Professional Development and Competence Committee shall appoint one or more persons to conduct reviews of members' practices under section 42 of the Act.

Mandatory reviews

5. (1) On the request of the Secretary, the chair or a vice-chair of the Professional Development and Competence Committee shall direct that a review of a member's practice be conducted if the chair or the vice-chair to whom the Secretary has made the request is satisfied that there are reasonable grounds for believing that the member may be failing or may have failed to meet standards of professional competence.

Pursuant to section 49.4 of the Act the chair or vice-chair of the Professional Development and Competence Committee shall direct a review of a member's practice if the circumstances prescribed by the by-law exist.

The committee has considered what circumstances should be set out in the by-law. Three possibilities were canvassed :

1. The chair or vice-chair will direct a review when satisfied that there are reasonable grounds for believing that the member may be failing or may have failed to maintain standards of professional competence. This approach was already approved by Convocation in March 1996.
2. Include certain specific circumstances which, by their very nature, would require the direction for a review. (e.g. A member who has received a certain number of complaints within a certain number of years preceding the request for the review.)
3. Require random reviews for members coming within certain identified categories (e.g. members who are in private practice and over 70 years old.)

The Committee considered a number of possible circumstances that might justify automatic review. It agrees that in the future evolution of the practice review system such circumstances might be articulated and be the subject of automatic review. The Committee is of the view that in this early stage of the development of the competence scheme only paragraph 1 should be included in the by-law.

This will provide an opportunity for the Law Society to gain experience in authorizing reviews under the Act. The Society may use the experience it gains to consider whether the development of profiles under paragraphs 2 and 3 is advisable to enhance the competence of the profession or to make clear to the profession that there are certain circumstances the existence of which will trigger a review.

Mandatory reviews: benchers

(2) The Treasurer shall exercise the authority of the chair or a vice-chair of the Professional Development and Competence Committee under subsection (1) when the Secretary requests a review of a bencher's practice.

Review of member's practice

6. (1) The Secretary shall assign one or more persons appointed under section 4 to conduct a review of a member's practice.

Assignment of additional persons to review

(2) At any time after a review has commenced, the Secretary may assign one or more persons appointed under section 4 to assist or replace the person or persons originally assigned to conduct the review.

Review of bencher's practice

(3) Subsections (1) and (2) do not apply to a review of a bencher's practice that is directed by the Treasurer under section 5.

Final report

7. (1) On completion of a review of a member's practice, the person or persons who conducted the review shall submit to the Secretary a final report on the review.

Contents of final report

(2) The final report on a review of a member's practice shall contain,

(a) the opinion of the person or persons who conducted the review as to whether the member who was the subject of the review is failing or has failed to meet standards of professional competence; and

(b) if the person or persons who conducted the review are of the opinion that the member who was the subject of the review is failing or has failed to meet standards of professional competence, the recommendations of the person or persons.

Final report: Secretary's duties

(3) The Secretary shall consider every final report submitted to him or her and shall provide to the member who is the subject of the final report a copy thereof.

Sections 8 -15 of the by-law set out the procedure under sections 42(3) - 42(8) of the Act. The Committee is of the view that if the Secretary decides that the recommendations that result from the review do not warrant inclusion in an order, then the member will simply be advised in writing what the recommendations are. There will be no further follow up from the review in such case. If the Secretary is of the view that the recommendations are serious enough that compliance is essential then the Secretary should include the recommendations in a proposal for an order.

Recommendations

8. (1) If on completion of a review of a member's practice and receipt of the final report on the review, the Secretary decides to make recommendations to the member under subsection 42 (3) of the Act, but not to include the recommendations in a proposal for an order under subsection 42 (4) of the Act, the Secretary shall so notify the member in writing.

Same

(2) The Secretary may make recommendations to the member at the same time as he or she notifies the member under subsection (1) or within a reasonable period of time after he or she notifies the member under subsection (1).

Proposal for order

9. (1) If on completion of a review of a member's practice and receipt of the final report on the review, the Secretary decides to make recommendations to the member under subsection 42 (3) of the Act and to include the recommendations in a proposal for an order under subsection 42 (4) of the Act, the Secretary shall so notify the member in writing.

Same

(2) The notice under subsection (1) shall be accompanied by the proposal for an order.

Form of proposal for an order

(3) A proposal for an order shall, as far as possible, be in the form of an order made under subsection 42 (7) of the Act.

Time for responding to proposal

(4) A member who receives a proposal for an order shall, not later than thirty days after the date specified on the notice given to the member under subsection (1), notify the Secretary in writing as to whether he or she accepts the proposal.

Extension of time for responding to proposal

(5) Despite subsection (4), on the request of the member, or on his or her own initiative, the Secretary may extend the time within which the member shall respond to the proposal.

Request for extension of time

(6) A request to the Secretary to extend time under subsection (5) shall be made by the member in writing and not later than the day on which the member is required under subsection (4) to respond to the proposal.

Modifying proposal for order

(7) Before the time for responding to a proposal for an order has expired, the Secretary may modify the proposal if the member consents to the modification, and the modified proposal shall be deemed to be the proposal to which the member is required to respond under subsection (4).

Failure to respond

(8) A member who fails to respond in writing to a proposal for an order within the thirty day period specified in subsection (4), or within the extended time period specified by the Secretary under subsection (5), the member shall be deemed to have refused to accept the proposal.

Review of proposal by bencher: materials

10. The Secretary shall provide to the elected bencher appointed under subsection 42 (6) of the Act to review a proposal for an order made to a member the following materials:

1. The final report on the review of the member's practice.

2. The member's written response, if any, to the final report, including the member's written response, if any, to the recommendations of the person or persons who conducted the review.

3. The proposal for an order made to the member.

4. The member's written response, if any, to the proposal.

The elected bencher should receive sufficient information to be able to determine whether it is appropriate to include the proposal in an order. The process is not, however, intended to be a complete reassessment by the elected bencher, but to be akin to a review of a draft consent order that judicial officers routinely undertake. The Committee recommends that the material included in section 10 of the by-law strikes the necessary balance appropriate for this process.

Review of proposal by bencher: refusal to make order

11. An elected bencher appointed under subsection 42 (6) of the Act to review a proposal for an order made to a member may refuse to make an order giving effect to the proposal only after a meeting with the member and the Secretary.

Review of proposal by bencher: modifications

12. An elected bencher appointed under subsection 42 (6) of the Act to review a proposal for an order made to a member may make an order that includes modifications to the proposal only after a meeting with the member and the Secretary.

It is in the interests of the Society and the member for "consent" matters to proceed as such wherever it is appropriate. The Committee is of the view that should the elected bencher be inclined to refuse to make the order, or be inclined to propose modifications or, if the bencher has questions, a meeting with the parties should be a first step. The purpose of the meeting would be to seek input from both sides as to modifications or the questions posed, or to discuss the reasons for which the bencher is considering refusing to make an order. If the modifications are agreed to the order would be made. If not the bencher could then consider whether to give effect to the original proposals through an order.

Communications with member and Secretary prohibited

13. An elected bencher appointed under subsection 42 (6) of the Act to review a proposal for an order made to a member shall not communicate with the member or the Secretary with respect to the proposal except in accordance with section 14.

Meeting with member and Secretary

14. (1) An elected bencher appointed under subsection 42 (6) of the Act to review a proposal for an order made to a member may meet with the member and the Secretary by means of such telephone, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other instantaneously.

Both parties to be present

(2) Subject to subsection (3), an elected bencher appointed under subsection 42 (6) of the Act to review a proposal for an order made to a member shall not meet with the member alone or with the Secretary alone to discuss the proposal.

Exception

(3) An elected bencher appointed under subsection 42 (6) of the Act to review a proposal for an order made to a member may meet with the Secretary alone to discuss the proposal if,

(a) the meeting is not held under section 12; and

(b) notice of the meeting has been given to the member in accordance with subsections (4) and (5) and the member fails to attend at the meeting.

Notice

(4) The Secretary shall give to a member reasonable notice of a meeting with the elected bencher appointed under subsection 42 (6) of the Act to review the proposal for an order made to the member.

Same

(5) A notice of a meeting shall be in writing and shall include,

(a) a statement of the time, place and purpose of the meeting; and

(b) a statement that if the member does not attend at the meeting, the elected bencher appointed under subsection 42 (6) of the Act to review the proposal for an order made to the member may meet with the Secretary alone to discuss the proposal.

Order

15. (1) An order made under subsection 42 (7) of the Act shall be in Form 24A [Order] and shall contain,

(a) the name of the elected bencher who made it;

(b) the date on which it was made; and

(c) a recital of the particulars necessary to understand the order, including the date of any meeting and the persons who attended at the meeting.

Same

(2) The operative parts of an order made under subsection 42 (7) of the Act shall be divided into paragraphs, numbered consecutively.

Notice of order

(3) The Secretary shall send to the member who is the subject of an order made under subsection 42 (7) of the Act a copy of the order by any of the following methods:

1. Personal delivery to the member.

2. Regular lettermail to the last known address of the member.

3. Fax to the last known fax number of the member.

4. E-mail to the last known e-mail address of the member.

Date of receipt: mail

(4) If the copy of the order is sent by regular lettermail, it shall be deemed to be received by the member on the fifth day after the day it is mailed.

Date of receipt: fax or e-mail

(5) If the copy of the order is sent by fax or e-mail, it shall be deemed to be received on the day after it was sent, unless the day is a holiday, in which case the copy shall be deemed to be received on the next day that is not a holiday.

Effective date of order

(6) Unless otherwise provided in the order, an order made under subsection 42 (7) of the Act is effective from the date on which it is made.

Interpretation: "holiday"

(7) In this section, "holiday" means,

(a) any Saturday or Sunday;

(b) New Year's Day;

(c) Good Friday;

(d) Easter Monday;

(e) Victoria Day;

(f) Canada Day;

(g) Civic Holiday;

(h) Labour Day;

(i) Thanksgiving Day;

(j) Remembrance Day;

(k) Christmas Day;

(l) Boxing Day; and

(m) any special holiday proclaimed by the Governor General or the Lieutenant Governor.

Form 24A

Order

(File no., if any)

The Law Society of Upper Canada

(Name of elected bencher) *(Day and date order made)*

In the matter of the *Law Society Act*
and *(identify member)*, a member of The Law Society of Upper Canada

ORDER

A PROPOSAL FOR THIS ORDER was made by the Secretary, under subsection 42 (4) of the *Law Society Act*, to the member *(identify member)* on *(specify date)* and was accepted by the member on *(specify date)*.
(OR, where the order includes modifications to the proposal,
A PROPOSAL FOR AN ORDER was made by the Secretary, under subsection 42 (4) of the Law Society Act, to the member (identify member) on (specify date).)

ON READING the final report on the review of the member's practice, *(the member's response to the final report,) (and)* the proposal for the order, *(and the member's response to the proposal for the order,)*

(ON MEETING with the member and the Secretary (or the Secretary alone, the member not attending and not being represented at the meeting, although properly notified), and on hearing the submissions of the member and the Secretary (or the Secretary),
OR
ON MEETING with the member and the Secretary and on hearing their submissions on an order that would include modifications to the proposal made by the Secretary to the member (if applicable, add: including their consent to such an order),)

IT IS ORDERED as follows:

1. ....

2. ....

(Signature of elected bencher)

APPENDIX 2

THE LAW SOCIETY OF UPPER CANADA

BY-LAW 21
[PROCEEDINGS AUTHORIZATION COMMITTEE]

made under the
LAW SOCIETY ACT

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON MARCH 26, 1999

Section 8

I MOVE that section 8 of By-Law 21 be amended by adding the following subsections:

Referral by elected bencher

(2.1) Subject to subsection (2.2), an elected bencher appointed under subsection 42 (6) of the Act to review a proposal for an order made to a member may refer to the Committee a matter respecting the professional competence of the member for the purpose of obtaining authorization for the Society to apply to the Hearing Panel for a determination of whether the member is failing or has failed to meet standards of professional competence.

Restrictions on referrals by elected bencher

(2.2) An elected bencher appointed under subsection 42 (6) of the Act to review a proposal for an order made to a member shall not refer to the Committee a matter respecting the professional competence of the member except after the bencher has,

(a) met with the member and the Secretary, as required under sections 11 and 12 of By-Law 24, in accordance with sections 13 and 14 of By-Law 24; and

(b) refused to make an order under subsection 42 (7) of the Act.

As the by-law currently reads, the Secretary is the only person who may refer a matter to the PAC. Further the Secretary is not required in any circumstances to refer a matter The Committee is of the view that there may be circumstances in which the elected bencher who has refused an order believes the matter should be referred to the PAC, but the Secretary does not intend to do so. The Committee is of the view that there should be discretion in the elected bencher to make such referral. In order to ensure, however, that steps have been taken to try to give effect to the consent proposal, the Committee recommends that the bencher should not be entitled to make such a referral until the steps set out in 2.2 have been taken.

THE LAW SOCIETY OF UPPER CANADA

BY-LAW 21
[PROCEEDINGS AUTHORIZATION COMMITTEE]

made under the
LAW SOCIETY ACT

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON MARCH 27, 1999

Subsection 9 (1) [review of matters]

I MOVE that subsection 9 (1) of By-Law 21 be amended by adding the following paragraphs:

3.1 Invite a member to attend before a panel of benchers to receive advice concerning his or her professional competence.

4.1 Send to a member a letter of advice concerning his or her professional competence.

These sections mirror similar ones relating to conduct situations. The Committee is of the view that in order to highlight the importance of the competence provisions there should be separate numbered paragraphs highlighting these options.

APPENDIX 3

Report of the Working Group on County and District Libraries
March 1999

Background Information

1. The Working Group on County and District Law Libraries has been meeting since December, 1998 to prepare the Phase II report, as directed by Convocation on October 23, 1998. The Working Group expects to present its report at the April, 1999 Convocation.

2. It is clear to the members of the Working Group that there will be a lot of detailed, administrative and structural decisions required to implement the Blended Model for the new library system and that such work is best left to a group specifically charged with focusing on those kinds of decisions. For example, which system and individual library services ought to be provided centrally and which ought to be locally provided requires a time consuming, detailed analysis of both the current arrangements for each such service and the benefits of altering that provision.

3. Convocation will need to set up strict parameters within which the group administering the new system is to operate while at the same time providing appropriate flexibility for day to day and long range decisions. In this manner, the new library system might be likened to the arrangement respecting LPIC where there is an arm's length relationship, but operating within specific policy directives and budget.

4. This means that the Phase II report will provide Convocation with some recommendations and a variety of options for implementing those recommendations. The Phase II report will cover the proposed Governing/Administrative Structure for the library system, funding options, standards to be applied in the system and a further delineation of the Blended Model. It will recommend the establishment of a New Co. to operate the system and a Transition/Implementation group to oversee the execution of the detailed planning required to implement Convocation's decisions.

5. In the time available and given the discussion to date in the Working Group, the Phase II report will not provide Convocation with a definitive, detailed step by step process for setting up and running the Blended Model. This work will take several more months and cannot begin until other policy decisions are made by Convocation regarding the nature and structure of the system. Most of these decisions will be requested at the April meeting of Convocation.

Purpose of this Report

6. The purpose of this report is to advise Convocation of the nature of some of the decisions that will be required in April and to seek permission to start advertising for an Executive Director for the new system, the details of which are set out below.

7. Recommendations forthcoming in April will include:

a) To govern/administer the new system of county law libraries the existing partnership arrangement between CDLPA and the Society, which operates poorly (as outlined in detail in the Phase I report) should be replaced by a corporate entity (New Co.).

b) The details of how New Co. is established, what the ownership provisions should be, size of the board, appointment process etc. will be options presented to Convocation in April. For example, there is disagreement in the Working Group as to the best size for the board of New Co. so at least two options will be presented for Convocation's determination.

c) New Co. will employ an Executive Director. The tentative job description for this position is attached. The precise wording may require assistance from the Society's Human Resources department.

d) Following the delivery of the Phase II report the Working Group will ask that it be disbanded and replaced by a Transition/Implementation Group. The purpose of such Transition group will be to work with the Executive Director to make the necessary detailed decisions to implement the decisions of Convocation regarding the establishment of the new system. Details of the formation of the Transition group and its tasks will be contained in the April report.

e) The Working Group expects that it will take 2 to 3 months to locate and hire a suitable candidate for the position of Executive Director. Given the importance of this position to the success of the new system, it is desirable to have the position filled by June 1st, 1999 if possible so that the new system can be in place by January 1, 2000. It is expected that there will be at least six months preparatory work to establishing the system, including consultation with each of the 48 county law libraries.

f) The Executive Director will be expected to work closely with the Transition group to make sure the new system implements the Blended Model and is established in accordance with the standards and decisions established by Convocation through the Phase II report in April.

g) As a result of the importance of this position and the relative shortness of time in completing the tasks, the Working Group would like to begin advertising for the position of Executive Director immediately, rather than wait until following the April Convocation.

h) There are several reasons for advertising this position immediately. Among the reasons are:

i) It is important to have the position filled by the summer of 1999, so that the new system can be in place for January 2000.

ii) Candidates who have the qualifications to fill this position will currently be in senior level positions and will need to provide at least one month's notice to their current employer.

iii) It is hoped that by the time the report is debated in Convocation in April some résumés will already be in hand. If the new model has been approved interviewing can begin immediately.

iv) The academic year ends in May and academic law librarians may be inaccessible should the posting of the advertisement be delayed past the academic year end. As there is only a small pool of candidates who have the credentials to fill the position it is important to make sure the search is as broad as possible and includes librarians currently employed as academics.

v) Interviewing could take some time as applications could be received from across the country.

Financial Impact

8. Attached is a draft of the proposed advertisement. It will be run in the usual publications and venues for the hiring of experienced, senior law librarians. It is expected the cost of such advertising will be minimal, less than $2,000, and that the expense be borne out of the funds held by the Society for county law library purposes.

9. The salary of the Executive Director will be paid from the existing accumulated fund held for the purpose of County Law Libraries. This fund currently totals in excess of $1 million.

Action Requested

10. *The Working Group seeks permission of Convocation to place an advertisement immediately, with the assistance of the Society's Human Resources department, for the position of Executive Director of the new system of County Law Libraries on condition that no interviews take place or job offers be put to any candidates until Convocation approves (hopefully in April) the establishment of such a position either as part of New Co. or otherwise.*

Proposed Advertisement

NEW POSITION OF EXECUTIVE DIRECTOR FOR COUNTY LAW LIBRARY SYSTEM TO BE CREATED

The Law Society of Upper Canada is considering setting up a new corporation, with a Board of Directors, to administer the 48 Ontario County Law libraries as a separate system of libraries. The new system will be managed by an Executive Director who will be responsible for the overall maintenance of established standards, providing local associations with assistance, ongoing training of library staff, training of lawyers, and budgeting for the system.

This new position will require an experienced law library professional with an MLS/MLIS degree and at least 5 years of law library experience. A senior management position which has encompassed financial planning and budgeting is an essential attribute of the candidate's credentials. Knowledge and experience of law library related technology and electronic information sources as well as knowledge of legislation affecting law libraries will be required.

If you think you might be the person who could fill this position and are interested in further information, please contact .....

Executive Director - Draft Job Description

The Executive Director has the overall responsibility for the operation of the system and the execution of system policies. He/she will act as a liaison between the Board and the individual libraries/local associations, balancing the need for local autonomy with the overall needs of the system. The Executive Director must be familiar with all libraries in the system and be able to evaluate service levels and staff performance.

The qualifications of the Executive Director will be:

- supervisory/administrative experience
- budgeting/financial planning experience
  law library experience
  MLS or MLIS
  broad knowledge and experience of library procedures
  knowledge and experience of law library related technology and electronic information sources
  knowledge of legislation affecting law libraries

The duties of the Executive Director will also include:

planning and development for ongoing growth and operation of system
- communication of policies and procedures
hiring other administrative office staff
providing local associations with assistance as requested in hiring/managing staff
personnel administration as determined in conjunction with local associations
seeking /monitoring sources of funding system budget preparation/assisting local associations as requested with local budgets
public relations/marketing for system
gathering and coordinating system-wide statistics
monitoring and ensuring the library standards are met throughout the system
ensuring cooperation/smooth exchange of materials/reference services between libraries
ensuring continuing education opportunities for all staff in the system
monitoring/overseeing collections of materials (all formats) within the system
involvement with professional associations

.....

It was moved by Mr. Elliott, seconded by Ms. Eberts that the Working Group be given the authority to advertise for the position of Executive Director of the new system of County Law Libraries.

Carried

Approval of By-Law 24

The Chair asked that the following amendments be made to By-Law 24 contained in the Report at page 12 under Appendix l and in the separate motion on By-Law 24 at Tab 3:

(1) page 12 under Appendix 1 of the Report and in the motion on By-Law 24 at Tab 3 - that the following words be added at the end of subsection 14 (2) "but nothing in this subsection is intended to deny to the member the right to counsel"

(2) page 7 under Appendix l of the Report - that in section 2 in the "marginal note" and in the body of section 2 the words "Director, Professional Competence" should be changed to "Director, Professional Standards"

Amendment to By-Law 24 - TAB 3

THE LAW SOCIETY OF UPPER CANADA

BY-LAWS
made under the
LAW SOCIETY ACT

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON MARCH 26, 1999

By-Law 24 [Professional Competence]

I MOVE that By-Law 24 [Professional Competence] be made as follows:

BY-LAW 24

PROFESSIONAL COMPETENCE

Exercise of powers by Professional Development and Competence Committee
1. The performance of any duty, or the exercise of any power, given to the Professional Development and Competence Committee under this By-Law is not subject to the approval of Convocation.

Delegation of powers and duties of Secretary: Director, Professional Standards
2. An officer or employee of the Society who holds the office of Director, Professional Standards may, subject to any terms and conditions that may be imposed by the Secretary, exercise the powers and perform the duties of the Secretary under,

(a) subsections 42 (3), (4), (5), (6) and (8) of the Act;

(b) section 8 of By-Law 21; and

(c) this By-Law.

INFORMATION

Requirement to provide information
3. (1) The Secretary may require a member to provide to the Society specific information about the member's quality of service to clients, including specific information about,

(a) the member's knowledge, skill or judgment;

(b) the member's attention to the interests of clients;

(c) the records, systems or procedures of the member's practice; and

(d) other aspects of the member's practice.

Notice of requirement to provide information
(2) The Secretary shall notify a member in writing of the requirement to provide information under subsection (1) and shall send to the member a detailed list of the information to be provided by him or her.

Time for providing information

(3) The member shall provide to the Society the specific information required of him or her not later than thirty days after the date specified on the notice of the requirement to provide information.

Extension of time for providing information

(4) Despite subsection (3), on the request of the member, the Secretary may extend the time within which the member shall provide to the Society the specific information required of him or her.

Request for extension of time

(5) A request to the Secretary to extend time under subsection (4) shall be made by the member in writing and not later than the day on which the member is required under subsection (3) to provide to the Society the specific information required of him or her.

PRACTICE REVIEWS

Appointment of persons to conduct reviews

4. The Professional Development and Competence Committee shall appoint one or more persons to conduct reviews of members' practices under section 42 of the Act.

Mandatory reviews

5. (1) On the request of the Secretary, the chair or a vice-chair of the Professional Development and Competence Committee shall direct that a review of a member's practice be conducted if the chair or the vice-chair to whom the Secretary has made the request is satisfied that there are reasonable grounds for believing that the member may be failing or may have failed to meet standards of professional competence.

Mandatory reviews: benchers

(2) The Treasurer shall exercise the authority of the chair or a vice-chair of the Professional Development and Competence Committee under subsection (1) when the Secretary requests a review of a bencher's practice.

Review of member's practice

6. (1) The Secretary shall assign one or more persons appointed under section 4 to conduct a review of a member's practice.

Assignment of additional persons to review

(2) At any time after a review has commenced, the Secretary may assign one or more persons appointed under section 4 to assist or replace the person or persons originally assigned to conduct the review.

Review of bencher's practice

(3) Subsections (1) and (2) do not apply to a review of a bencher's practice that is directed by the Treasurer under section 5.

Final report

7. (1) On completion of a review of a member's practice, the person or persons who conducted the review shall submit to the Secretary a final report on the review.

Contents of final report

(2) The final report on a review of a member's practice shall contain,

(a) the opinion of the person or persons who conducted the review as to whether the member who was the subject of the review is failing or has failed to meet standards of professional competence; and

(b) if the person or persons who conducted the review are of the opinion that the member who was the subject of the review is failing or has failed to meet standards of professional competence, the recommendations of the person or persons.

Final report: Secretary's duties

(3) The Secretary shall consider every final report submitted to him or her and shall provide to the member who is the subject of the final report a copy thereof.

Recommendations

8. (1) If on completion of a review of a member's practice and receipt of the final report on the review, the Secretary decides to make recommendations to the member under subsection 42 (3) of the Act, but not to include the recommendations in a proposal for an order under subsection 42 (4) of the Act, the Secretary shall so notify the member in writing.

Same

(2) The Secretary may make recommendations to the member at the same time as he or she notifies the member under subsection (1) or within a reasonable period of time after he or she notifies the member under subsection (1).

Proposal for order

9. (1) If on completion of a review of a member's practice and receipt of the final report on the review, the Secretary decides to make recommendations to the member under subsection 42 (3) of the Act and to include the recommendations in a proposal for an order under subsection 42 (4) of the Act, the Secretary shall so notify the member in writing.

Same

(2) The notice under subsection (1) shall be accompanied by the proposal for an order.

Form of proposal for an order

(3) A proposal for an order shall, as far as possible, be in the form of an order made under subsection 42 (7) of the Act.

Time for responding to proposal

(4) A member who receives a proposal for an order shall, not later than thirty days after the date specified on the notice given to the member under subsection (1), notify the Secretary in writing as to whether he or she accepts the proposal.

Extension of time for responding to proposal

(5) Despite subsection (4), on the request of the member, or on his or her own initiative, the Secretary may extend the time within which the member shall respond to the proposal.

Request for extension of time

(6) A request to the Secretary to extend time under subsection (5) shall be made by the member in writing and not later than the day on which the member is required under subsection (4) to respond to the proposal.

Modifying proposal for order

(7) Before the time for responding to a proposal for an order has expired, the Secretary may modify the proposal if the member consents to the modification, and the modified proposal shall be deemed to be the proposal to which the member is required to respond under subsection (4).

Failure to respond

(8) A member who fails to respond in writing to a proposal for an order within the thirty day period specified in subsection (4), or within the extended time period specified by the Secretary under subsection (5), the member shall be deemed to have refused to accept the proposal.

Review of proposal by bencher: materials

10. The Secretary shall provide to the elected bencher appointed under subsection 42 (6) of the Act to review a proposal for an order made to a member the following materials:

1. The final report on the review of the member's practice.

2. The member's written response, if any, to the final report, including the member's written response, if any, to the recommendations of the person or persons who conducted the review.

3. The proposal for an order made to the member.

4. The member's written response, if any, to the proposal.

Review of proposal by bencher: refusal to make order

11. An elected bencher appointed under subsection 42 (6) of the Act to review a proposal for an order made to a member may refuse to make an order giving effect to the proposal only after a meeting with the member and the Secretary.

Review of proposal by bencher: modifications

12. An elected bencher appointed under subsection 42 (6) of the Act to review a proposal for an order made to a member may make an order that includes modifications to the proposal only after a meeting with the member and the Secretary.

Communications with member and Secretary prohibited

13. An elected bencher appointed under subsection 42 (6) of the Act to review a proposal for an order made to a member shall not communicate with the member or the Secretary with respect to the proposal except in accordance with section 14.

Meeting with member and Secretary

14. (1) An elected bencher appointed under subsection 42 (6) of the Act to review a proposal for an order made to a member may meet with the member and the Secretary by means of such telephone, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other instantaneously.

Both parties to be present

(2) Subject to subsection (3), an elected bencher appointed under subsection 42 (6) of the Act to review a proposal for an order made to a member shall not meet with the member alone or with the Secretary alone to discuss the proposal.

Exception

(3) An elected bencher appointed under subsection 42 (6) of the Act to review a proposal for an order made to a member may meet with the Secretary alone to discuss the proposal if,

(a) the meeting is not held under section 12; and

(b) notice of the meeting has been given to the member in accordance with subsections (4) and (5) and the member fails to attend at the meeting.

Notice

(4) The Secretary shall give to a member reasonable notice of a meeting with the elected bencher appointed under subsection 42 (6) of the Act to review the proposal for an order made to the member.

Same

(5) A notice of a meeting shall be in writing and shall include,

(a) a statement of the time, place and purpose of the meeting; and

(b) a statement that if the member does not attend at the meeting, the elected bencher appointed under subsection 42 (6) of the Act to review the proposal for an order made to the member may meet with the Secretary alone to discuss the proposal.

Order

15. (1) An order made under subsection 42 (7) of the Act shall be in Form 24A [Order] and shall contain,

(a) the name of the elected bencher who made it;

(b) the date on which it was made; and

(c) a recital of the particulars necessary to understand the order, including the date of any meeting and the persons who attended at the meeting.

Same

(2) The operative parts of an order made under subsection 42 (7) of the Act shall be divided into paragraphs, numbered consecutively.

Notice of order

(3) The Secretary shall send to the member who is the subject of an order made under subsection 42 (7) of the Act a copy of the order by any of the following methods:

1. Personal delivery to the member.

2. Regular lettermail to the last known address of the member.

3. Fax to the last known fax number of the member.

4. E-mail to the last known e-mail address of the member.

Date of receipt: mail

(4) If the copy of the order is sent by regular lettermail, it shall be deemed to be received by the member on the fifth day after the day it is mailed.

Date of receipt: fax or e-mail

(5) If the copy of the order is sent by fax or e-mail, it shall be deemed to be received on the day after it was sent, unless the day is a holiday, in which case the copy shall be deemed to be received on the next day that is not a holiday.

Effective date of order

(6) Unless otherwise provided in the order, an order made under subsection 42 (7) of the Act is effective from the date on which it is made.

Interpretation: "holiday"

(7) In this section, "holiday" means,

(a) any Saturday or Sunday;

(b) New Year's Day;

(c) Good Friday;

(d) Easter Monday;

(e) Victoria Day;

(f) Canada Day;

(g) Civic Holiday;

(h) Labour Day;

(i) Thanksgiving Day;

(j) Remembrance Day;

(k) Christmas Day;

(l) Boxing Day; and

(m) any special holiday proclaimed by the Governor General or the Lieutenant Governor.

Form 24A

Order

(File no., if any)

The Law Society of Upper Canada

(Name of elected bencher) *(Day and date order made)*

In the matter of the *Law Society Act*
and *(identify member)*, a member of The Law Society of Upper Canada

ORDER

A PROPOSAL FOR THIS ORDER was made by the Secretary, under subsection 42 (4) of the *Law Society Act*, to the member *(identify member)* on *(specify date)* and was accepted by the member on *(specify date)*.
(OR, where the order includes modifications to the proposal,
A PROPOSAL FOR AN ORDER was made by the Secretary, under subsection 42 (4) of the Law Society Act, to the member (identify member) on (specify date).)

ON READING the final report on the review of the member's practice, *(the member's response to the final report,) (and)* the proposal for the order, *(and the member's response to the proposal for the order,)*

(ON MEETING with the member and the Secretary (or the Secretary alone, the member not attending and not being represented at the meeting, although properly notified), and on hearing the submissions of the member and the Secretary (or the Secretary),
OR
ON MEETING with the member and the Secretary and on hearing their submissions on an order that would include modifications to the proposal made by the Secretary to the member (if applicable, add: including their consent to such an order),)

IT IS ORDERED as follows:

1. ... .

2. ... .

(Signature of elected bencher)

It was moved by Ms. Eberts, seconded by Ms. Puccini that By-Law 24 on Professional Competence be adopted as amended.

Carried

Amendments to By-Law 21

It was moved by Ms. Eberts, seconded by Ms. Puccini that section 8 be amended by adding the following subsections:

"Referral by elected bencher

(2.1) Subject to subsection (2.2), an elected bencher appointed under subsection 42 (6) of the Act to review a proposal for an order made to a member may refer to the Committee a matter respecting the professional competence of the member for the purpose of obtaining authorization for the Society to apply to the Hearing Panel for a determination of whether the member is failing or has failed to meet standards of professional competence.

Restrictions on referrals by elected bencher

(2.2) An elected bencher appointed under subsection 42 (6) of the Act to review a proposal for an order made to a member shall not refer to the Committee a matter respecting the professional competence of the member except after the bencher has,

(a) met with the member and the Secretary, as required under sections 11 and 12 of By-Law 24, in accordance with sections 13 and 14 of By-Law 24; and

(b) refused to make an order under subsection 42 (7) of the Act."

and that subsection 9 (1) of By-Law 21 be amended by adding the following paragraphs:

"3.1 Invite a member to attend before a panel of benchers to receive advice concerning his or her professional competence.

4.1 Send to a member a letter of advice concerning his or her professional competence."

Carried

THE REPORT AS AMENDED WAS ADOPTED

MOTION - Amendment of By-Laws 1 to 5 and 7 to 13

It was moved by Mr. Copeland, seconded by Mr. MacKenzie that By-Laws 1 to 5 and 7 to 13 be amended by adding to each By-law its French version as set out in Tab 3 of the bound Reports.

Carried

Amendments to By-Law 16 re: Professional Liability Insurance Levies

The motions on the amendments to By-Law 16 were deferred.

REPORT OF THE PROFESSIONAL REGULATION COMMITTEE

Re: Amendments to the Rules of Practice and Procedure

Mr. Ortved presented the Report of the Professional Regulation Committee for approval.

Professional Regulation Committee
March 11, 1999

Report to Convocation

Purpose of Report: Decision and Information

TABLE OF CONTENTS

TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Professional Regulation Committee ("the Committee") met on March 11, 1999. In attendance were:

Eleanore Cronk (Chair)

Gavin MacKenzie (Vice-Chairs)
Niels Ortved

Paul Copeland
Marshall Crowe

Staff: Jonathan Batty, Janet Brooks, Jonathan Fedder, Richard Tinsley, Stephen Traviss, Jim Varro, and Jim Yakimovich.

2. This report contains the Committee's:

- ♦ policy report on proposals for minor amendments to two rules of practice and procedure; and
- ♦ information reports on;
  - the content of reminder notices to members in default of filing or payment of fees/levies; and
  - update on the one year pilot project undertaken by the Advocates' Society for duty counsel at discipline hearings.

I. POLICY

AMENDMENTS TO THE RULES OF PRACTICE AND PROCEDURE

3. On January 28, 1999, Convocation made Rules of Practice and Procedure applicable to hearings at the Law Society, pursuant to authority in the amended *Law Society Act*.

4. It came to the attention of staff that amendments were required to two rules, Rule 1.01 and Rule 13.03, as described below.

5. The Committee agreed with the proposed amendments and is requesting Convocation to make the amendments, as set out in the motions included herewith.

Rule 1.01 - Application

6. The required amendment is to correct a typographical error. The rule should include reference to applications for readmission under section 30 of the *Law Society Act*, which relates to applications for readmission made by members and student members who have administratively resigned their membership. The number "30" does not presently appear in the rule.

7. The amendment proposed is highlighted in boldface in the text of the rule as follows:

Application

1.01 Rules 1 through 15 apply to hearings before tribunals under sections 27, 28.1, 30, 31, 32, 34, 38, 45, 49.1, 49.32(1), 49.32(2), 49.42, and 49.43 of the *Law Society Act* (hereinafter "the Act").

Rule 13.03 - Written Reasons

8. The required amendment is again to correct a typographical error. Rule 13.03 now references subrule 15.06. Rule 13.03 should have referenced subrule 15.07, which provides that the Appeal Panel shall give written reasons for its decision in every case.

9. The amendment proposed is highlighted in boldface in the text of the rule as follows:

Written Reasons

13.03 (1) Subject to subrule(2) and subrule 15.07, a tribunal is required to give reasons in writing if the request for written reasons is made within thirty days after the day on which the panel makes its final decision or order.

(2) A Hearing Panel shall issue written reasons for decisions in relation to capacity applications in every case.

DECISION FOR CONVOCATION

10. Convocation is requested to make the above noted amendments to the Rules of Practice and Procedure, pursuant to the following motions:

THE LAW SOCIETY OF UPPER CANADA

RULES OF PRACTICE AND PROCEDURE

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON MARCH 26, 1999

RULE 1 - GENERAL RULES

I MOVE that rule 1 be amended by adding to rule 1.01 after "28.1," in the first line "30,".

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON MARCH 26, 1999

RULE 13 - ORDERS

I MOVE that rule 13 be amended by striking out "15.06" in the first line of rule 13.03(1) and substituting "15.07".

II. INFORMATION

CONTENT OF REMINDER NOTICES TO MEMBERS IN DEFAULT OF FILING OR PAYMENT OF FEES/LEVIES

11. At the January 28, 1999 Convocation, during the discussion which led to the adoption of certain by-laws and the rules of practice and procedure, a number of issues relating to the new procedures were identified for the Committee's review.

12. One of those issues was the language to be used in notices to members whose suspensions pursuant to a summary order under section 48 of the *Law Society Act* continue for 12 months, and who are subject to summary revocation of membership. A working group of the Committee[1] was assigned to review this and the other issues. While the working group has yet to complete its review, the Committee decided to review the work done to date on the notice issue.

[1] Gary Gottlieb and Paul Copeland (and staff).

13. The working group reported orally that it began with a review of the first reminder notice sent to members who are in default of filing the required forms or payment of required fees or levies. The focus was on the nature of the language that should be used in this first notice. The particular notice reviewed was that for failure to file the Private Practitioner's Report.[2]

14. The working group suggested, and the Committee agreed, that the reminder sent prior to seeking a summary order for revocation of membership should follow the wording in the current notices which were prepared by staff and, after approval of the by-laws governing the filing and fee/levy payments requirements, sent to those members in default. That language reflects:

- a warning of the possibility of summary suspension or revocation, as the case may be;
- reference to the relevant section of the *Law Society Act*; and
- the name of the department within the Law Society which can provide information on how the default can be cured.

15. The working group and relevant staff received guidance from the Committee on some language issues with respect to the notice. Staff have incorporated the suggestions which are now contained in the revised reminder notice, a sample copy of which is attached for information purposes.

UPDATE ON THE ADVOCATES SOCIETY'S PROGRAM FOR *PRO BONO* DUTY COUNSEL AT DISCIPLINE HEARINGS

16. At the November 28, 1997 meeting of Convocation, the Committee reported on a pilot project undertaken by the Advocates Society to provide *pro bono* duty counsel to members on Law Society discipline hearings days. The program began in March 1998 as a one year pilot project.

17. The Committee received information from the Secretary, Richard Tinsley, that the Advocates Society will shortly be reviewing the program and assessing its efficacy. The meeting for this purpose will also address whether expansion of the program, or movement to a model which may provide counsel to a member at the outset of the hearing process[3], should be undertaken. Mr. Tinsley and the Law Society's Senior Discipline Counsel, Lesley Cameron will be attending the meeting.

18. The Committee will report to Convocation on the results of the Advocates Society's assessment of the program and the Committee's own assessment of the program after the meeting has been held.

Date

Address
Address
Address

---

[2]The notice will be adapted for the particular default issue for which it is sent to the member.

[3]The Committee's report to Convocation on duty counsel at discipline hearings, through which the Advocates' Society's offer to run the program was reported, included discussion on whether a fuller counsel model should be considered. The report stated: "The Committee also agreed that the effectiveness of the first phase of the program should be assessed before expansion to include other *pro bono* services could be considered."

First Notice of Default
For the Private Practitioner's Report

Period last filed: (date)

The Society's records show that you have not complied with the annual filing requirements of By-law 17 made pursuant to the *Law Society Act*. The date of your last filing of the Private Practitioner's Form was for the period identified above.

By-law 17 requires all members who engage in the private practice of law in Ontario to file a Private Practitioner's Report within 90 days of the termination of their fiscal year. Members who practised exclusively as employees of sole practitioners or law firms or as employees of certain corporations or unincorporated associations and members who, while not practising, continue to hold or handle money or property of a person must file their Private Practitioner's Report in relation to the calendar year by March 31st of the subsequent year.

Members whose rights and privileges are suspended are not exempt from the requirements of By-law 17.

Please note that failure to file your Private Practitioner's Report may result in a summary order suspending your membership and, if that order remains outstanding for more than 12 months, a further order revoking your membership. The *Law Society Act* provides as follows:

> 47 (1) An elected bencher appointed for the purpose by Convocation may make an order suspending a member's rights and privileges if, for the period prescribed by the by-laws,
> (a) the member has been in default for failure to complete or file with the Society any certificate, report or other document which the member is required to file under the by-laws; ...
>
> 48 An elected bencher appointed for the purpose by Convocation may make an order revoking a members' membership in the Society, disbarring the member as a barrister and striking his or her name off the roll of solicitors if an order under section 46 or clause 47 (1)(a) is still in effect more than 12 months after it was made.

We urge you to comply with your filing obligations. If you require further information, please contact the Law Society's Forms Services Department:
by e-mail to LSFORMS@LSUC.ON.Ca;
by fax to (416) 947-5260; or
by telephone to (416) 947-3932 or if outside the local calling area, 1-800-668-7380.

.....

It was moved by Mr. Ortved, seconded by Mr. MacKenzie that Rule 1 - General Rules be amended by adding to Rule 1.01 after "28.1" in the first line "30" and that Rule 13 - Orders be amended by striking out "15.06", in the first line of Rule 13.03(1) and substituting "15.07".

Carried

THE REPORT WAS ADOPTED

REPORTS OF THE LAWYERS FUND FOR CLIENT COMPENSATION COMMITTEE

Mr. Ruby presented the 2 Reports of the Lawyers Fund for Client Compensation Committee.

REPORT #1

The Lawyers Fund for Client Compensation Committee
March 26, 1999

Report #1 to Convocation

Purpose of Report: Decision Making, Information

TABLE OF CONTENTS

TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Lawyers Fund for Client Compensation Committee ("the Committee") met on January 21, 1999. In attendance were:

Clayton Ruby (Chair)
Robert Aaron (Vice Chair)
Nancy Backhouse
Ronald Cass, Q.C.
Paul Copeland
Marshall Crowe
Gordon Farquharson, Q.C.
Gary Lloyd Gottlieb, Q.C.
Robert Topp

Staff: Sara Hickling, Maria Loukidelis, David McKillop, Evan Shapiro, Heather Werry and Jim Yakimovich.

2. This report contains:

- a report on corporate claimants to the Fund;
- a report on inter-jurisdictional practice claims to the Fund;
- the Committee's information report on investment claims to the Fund;
- the Committee's information report on 1998 year end statistics for the Fund;
- the Committee's information report on claims paid from the Lawyers Fund for Client Compensation since its last report in May of 1998.

DECISION MAKING

I. CORPORATE CLAIMS TO THE LAWYERS FUND FOR CLIENT COMPENSATION

A. NATURE AND SCOPE OF THE ISSUE

3. The Fund was recently placed on notice of a potential claim from one of Canada's largest corporations (1997 after tax net income $850 million). There is nothing in the current guidelines to prevent such a claim from resulting in a grant. Guideline 12 only prevents grants being made to banks and similar institutions. An actual claim from this corporation has not been received and therefore it is not known at this time whether the claim has any merit. However, it has raised the issue of whether such claims should be entertained and if not, where the line should be drawn.

B. BACKGROUND

Guideline 12 of the General Guidelines for the Determination of Grants from the Fund

4. Guideline 12 reads as follows:

> "The financial circumstances of the person actually suffering the loss and the degree of hardship suffered by that person as a result of the loss are factors to be taken into account when determining any grant. No grant shall be made to a bank or other financial institution engaged in the business of lending money."

Traditionally this guideline, with the exception of the last sentence, has only been interpreted in such a way as to benefit claimants. For example, if a loss was particularly devastating to a claimant, they may be given the benefit of the doubt when it comes to deducting any interest payments received or considering factors such as risk and carelessness when determining the amount of any grant.

5. Arguably Guideline 12 could also be interpreted to say that those claimants of significant financial means have not suffered hardship as a result of their loss and therefore should not have access to the Fund. However, the Fund has not been in the practice of examining a claimant's wealth to determine eligibility for a grant. Therefore, individuals of significant financial means have received grants from the Fund. Many funds in other jurisdictions do typically use their Guideline 12 equivalent to deny grants to wealthy corporations but they do not treat wealthy individuals any differently. Both would be denied access to their funds.

C. POLICY ISSUE

6. It would be possible to deny access to the Fund to all corporate claimants but to do so would deny access to very small corporations where the loss of their money would truly result in hardship.

Other jurisdictions address the issue as follows:

i) New York - no grant may be made to business organizations having 20 or more employees.

ii) Virginia - reimbursement may be denied to any claimant who has a net worth in excess of $1 million or adjusted gross income in excess of $75,000 for the year preceding the claim.

iii) Florida - "publicly traded corporations and government departments and agencies" are not permitted to make claims to the Fund.

The Committee's Proposal

7. The Committee elected not to revise the wording of Guideline 12. Such claims are rare. Rather, it instructed staff, using the current wording, to use their discretion and bring to the Review Sub-Committee's attention both corporate and individual claimants who, due to their wealth, possibly should not have access to the Fund. Utilizing this approach, corporate claims will be examined on an individual basis and it will be up to the Review Sub-Committee to determine if the loss of funds will result in hardship to the claimant and, if not, whether a grant will be nonetheless considered in whole, in part, or at all.

Financial Impact

8. Claims from very wealthy individuals and large corporations are not common. On average, there may be one per year. If the Review Sub-Committee were to use their discretion and recommend that no grant be paid to such a claimant, the move could result in savings of up to $100,000 per annum. This represents approximately 2% of the total of all grants paid on an annual basis.

Decision for Convocation

9. Convocation must decide whether:
   a. to accept the Committee's proposal as set out in paragraph 7 above;
   b. to accept the Committee's proposal with amendments Convocation deems appropriate;
   c. to decide upon other options either discussed above or to be articulated by Convocation.

II. INTER-JURISDICTIONAL PRACTICE CLAIMS TO THE FUND

A. NATURE AND SCOPE OF THE ISSUE

10. Guideline 14 of the General Guidelines for the Determination of Grants from the Lawyers Fund for Client Compensation reads as follows:

> "In the case of a member who conducts a legal practice in a jurisdiction outside Ontario, no grant shall be paid out of the Fund when the funds or property of the claimant were received by or on behalf of the member in connection with a matter that originated in that jurisdiction or in connection with a trust of which the member was or is a trustee that originated outside Ontario."

11. Recently the Law Society of Manitoba initiated a policy whereby members from other Canadian jurisdictions wishing to practice in Manitoba pursuant to an Occasional Appearance Certificate, must supply evidence from their home jurisdiction that their Manitoba clients will have access to the home jurisdiction's compensation fund. Guideline 14, as it currently reads, would prevent such a claim.

B. BACKGROUND

12. Law Society of Upper Canada members practising in other Canadian jurisdictions pursuant to an Occasional Appearance Certificate remain members of LSUC and do not become members of the host jurisdiction in the normal sense of the word. They are "deemed" to be members for the purpose of a specific proceeding and are deemed to have applied for permission to resign when the proceeding is completed. If any fees are payable (they are often waived if the two jurisdictions have a reciprocal arrangement), no portion would be payable to the host jurisdiction's compensation fund. At the present time, should the Ontario member's out of province clients suffer a financial loss due to their lawyer's dishonesty, no access to a compensation fund from either the home or host jurisdiction would be available.

13. A staff proposal was presented to the Committee that Guideline 14 of the General Guidelines for the Determination of Grants from the Lawyers Fund for Client Compensation be amended to permit clients access to the Fund if their lawyer is a member of the LSUC and is appearing on a matter in another Canadian jurisdiction pursuant to an Occasional Appearance Certificate. Suggested wording was as follows:

"In the case of a member who, *other than pursuant to an Occasional Appearance Certificate issued by a provincial or territorial law society in Canada,* conducts a legal practice in a jurisdiction outside Ontario, no grant shall be paid out of the Fund when the funds or property of the claimant were received by or on behalf of the member in connection with a matter that originated in that jurisdiction or in connection with a trust of which the member was or is a trustee that originated outside Ontario." (Changes in italics)

The Committee's View

14. The Committee was of the opinion that the wording of Guideline 14 should not be changed. Rather, other Canadian provinces and territories should be advised that if they wish their citizens to have access to the Ontario Fund by virtue of Ontario lawyers practising in those jurisdictions pursuant to Occasional Appearance Certificates, then Ontario citizens must be afforded reciprocal treatment when they are being represented in Ontario by Occasional Appearance lawyers from other Canadian jurisdictions. Staff were instructed to bring this issue back to the Committee if any other Canadian jurisdiction was not prepared to offer reciprocity.

Financial Impact

15. No positive or negative financial impact is anticipated as a result of this recommendation. Assuming other jurisdictions are prepared to offer reciprocal treatment for Ontario clients of out of province lawyers, a negative financial impact would only be expected if an Ontario lawyer dishonestly deprived an occasional appearance client of money or property. This has never occurred in the past and given the nature of Occasional Appearance Certificates [no large amounts of money involved, few practitioners request them], the chances of receiving such a claim are slim.

Decision for Convocation

16. Convocation must decide whether:
    a. to accept the Committee's proposal as set out in paragraph 14 above;
    b. to accept the Committee's proposal with amendments Convocation deems appropriate;
    c. to decide upon other options either discussed above or to be articulated by Convocation.

INFORMATION

I. INVESTMENT CLAIMS TO THE FUND

17. Investment type claims have always had a significant impact on the Fund, both in terms of the resources required to administer the large number of claims and the money needed to pay legitimate claims. The most common form of investment claim occurs when a client utilizes the services of a lawyer in order to invest in mortgages registered against real property.

18. Investment type claims have traditionally represented about 70% to 75% of all claims received by the Fund. Clients typically submit investment claims when the investment turns out to be a partial or total failure and it is learned the lawyer's dishonest acts were largely responsible for the loss.

19. Robert Topp, a member of the Review Sub-Committee, has recently expressed concern about the number and magnitude of investment type claims to the Fund. His concern has largely been heightened by the claims being received on account of Solicitor #15 [members who have yet to complete the discipline process are identified by number to prevent allegations of bias]. Solicitor #15 was a sole practitioner in the GTA who was very active in placing mortgage monies for clients. Gross claims to the Fund on account of this member total $13 million. Thus far, $2.5 million has been paid to claimants and it is estimated total grant payments will be $5 million by the time all claim files are dealt with.

20. Mr. Topp wished the Committee to discuss the treatment of mortgage claims (should risk and careless deductions be even more severe than at present) and whether the Fund should be addressing them at all.

21. During the discussion a motion was introduced by Mr. Cass, seconded by Mr. Farquharson, that the per lawyer limit, eliminated in 1988, be reintroduced with a new limit of $2 million. While individual claimants are limited to a maximum grant of $100,000, at present there is no limit on the amount that may be paid out an account of any one dishonest lawyer. The per lawyer limit was $1 million at the time it was rescinded. The motion was not carried by a vote of 5 to 4.

22. A motion was then introduced by Mr. Topp, seconded by Ms. Backhouse, that staff prepare a report on various alternatives that could be introduced to address the problem of investment claims to the Lawyers Fund for Client Compensation. Areas to be examined include per lawyer limits, special limits for investment claims, protection afforded investors in other industries and professions, the 'Two Lawyer Rule', etc. The motion carried by a vote of 4 to 1.

23. It is anticipated that the staff report will be presented to the Committee at a meeting to take place on March 11, 1999 and that a report from the Committee will be presented to March Convocation.

II. 1998 YEAR END FUND STATISTICS

24. The downward trend in the number and dollar value of claims continues. In calendar year 1997 the Fund received 259 claims worth a total of $12.2 million after limits have been applied. In 1998, 230 claims were received worth $10.6 million after the application of limits. As at December 31st 1997 the Fund had 331 outstanding claims worth $15.6 million with limits. As at December 31st 1998 there were 256 open claims worth $14.3 million; a reduction of 75 claims and $1.3 million with limits applied.

25. In 1997 the Fund paid out grants totalling $5 million. In 1998 the total was $4.5 million.

26. The type of claim received continues to follow historical patterns. Of all claims received in 1998, close to 68%, in terms of gross value, related to the loss of mortgage investment funds. The next largest category were trust misappropriation claims which accounted for 17%. Non-mortgage investment, retainer, LPIC non-reporting and 'other' claims accounted for the remaining 15%.

27. Of all outstanding claims on file as at December 31st 1998, mortgage claims account for 76.5% of the gross dollar value (62% with limits applied). The balance of the inventory is as follows: Trust Misappropriation 10.5% (13.6% limits); Non-Mortgage Investment 8.4% (14.8% limits); Other Claims 2.1% (4.5% limits); LPIC Non-Report 2.2% (3.7% limits) and Retainer .5% (1% limits).

28. For ease of reference, attached to this report and marked as Appendix "A" are a series of graphs depicting the statistics quoted herein.

III. GRANTS FROM THE LAWYERS FUND FOR CLIENT COMPENSATION

29. The Committee wishes to advise Convocation that the list of grants attached to this report and marked as Appendix "B" have been approved by the Review Sub-Committee and have been or are in the process of being paid out.

APPENDIX "B"

GRANTS APPROVED BY THE REVIEW COMMITTEE, APPEAL COMMITTEE AND BY THE LAWYERS FUND FOR CLIENT COMPENSATION COMMITTEE
THURSDAY, JANUARY 21, 1999

REFEREE AND/OR COMPENSATION STAFF	SOLICITOR	NUMBER OF CLAIMANTS	TOTAL
Appeal Committee (N. Backhouse, T. Cole, R. Cass)	Paul D. Squires (Disbarred September 22, 1994)	2	$37,500.00
Catherine A. Kennedy	Roger Bellefeuille (Permitted to Resign June 26, 1997)	4	$135,100.00
B.W. Grossberg, Q.C.	Paul D. Squires (Disbarred September 22, 1994)	4	Nil
	Ritchie J. Linton (Discipline Suspension 12 months, March 11, 1996)	3	Nil
Eva E. Marszewski	Kenneth Franklin Dyer (Disbarred June 25, 1992)	4	$91,011.99
Heather A. Werry	Solicitor #24 (Suspended Non-Payment LPIC Fees October 1, 1997- Discipline Pending)	5	$168,486.25
	Solicitor #36 (Suspended Non-Payment Annual Fees June 1, 1998 -Discipline Pending)	1	$4,083.68
	Solicitor #6 (Suspended Non-Payment LPIC Fees December 15, 1997- Discipline Pending)	5	$163,250.00

APPENDIX "B"

GRANTS APPROVED BY THE REVIEW COMMITTEE, APPEAL COMMITTEE AND BY THE LAWYERS FUND FOR CLIENT COMPENSATION COMMITTEE
THURSDAY, JANUARY 21, 1999

REFEREE AND/OR COMPENSATION STAFF	SOLICITOR	NUMBER OF CLAIMANTS	TOTAL
	Frank R. Mott-Trille (Disbarred October 29, 1997)	3	$90,400.00
	David A. Allport (Disbarred November 23, 1995)	3	$95,000.00
	Pierre Ouellette (Disbarred November 23, 1995)	1	$85,000.00
	Brian Richard Madigan (Discipline Suspension June 25, 1998)	1	$100,000.00
	Solicitor #37 (Suspended Non-Payment Annual Fee June 1, 1998 - Discipline Pending)	1	$63,650.20
	Solicitor #38 (Discipline Pending)	4	$40,000.00
Sara Hickling	Roger Lewis Clark (Disbarred September 28, 1995)	2	$75,000.00
	Peter D. Clark (Disbarred January 23, 1997)	1	$1,950.00
	James Robert Axler (Disbarred November 26, 1992)	1	$10,600.00
	Solicitor #12 (Suspended Non-Payment LPIC Fees May 26, 1995)	1	$77,000.00
	Lee Edward Fingold (Disbarred January 25, 1996)	1	$18,500.00
	John Alexander Sproule (Deceased August 19, 1994)	2	$65,000.00

APPENDIX "B"

GRANTS APPROVED BY THE REVIEW COMMITTEE, APPEAL COMMITTEE AND BY THE LAWYERS FUND FOR CLIENT COMPENSATION COMMITTEE
THURSDAY, JANUARY 21, 1999

REFEREE AND/OR COMPENSATION STAFF	SOLICITOR	NUMBER OF CLAIMANTS	TOTAL
	Ian Stuart McLennan (Disbarred December 15, 1978)	1	$27,000.00
	Arnold Epstein (Deceased October 29, 1998)	1	$5,500.00
	Tibor Bankuti (Permitted to Resign May 28, 1998)	1	$65,000.00
	Joram Gold (Discipline Suspension September 24, 1998)	1	$5,000.00
David McKillop	Paul Douglas Squires (Disbarred September 22, 1994)	26	$465,281.33
	Solicitor #30 (Undertaking Not to Practice Effective August 21, 1998)	1	$65,087.81
	George T. Gardiner (Discipline Suspension April 25, 1996)	1	$174.71
Maria Loukidelis	Arnold Handelman (Disbarred January 23, 1992)	4	$68,750.00
	Solicitor #15 (Retired or Not Working - November 22, 1996, Suspended Non-Payment Annual Fee - June 1, 1998, Discipline Pending)	22	$929,241.46
	Sadrudin Jaffer (Disbarred April 24, 1997)	1	$1,733.99

APPENDIX "B"

GRANTS APPROVED BY THE REVIEW COMMITTEE, APPEAL COMMITTEE AND BY THE LAWYERS FUND FOR CLIENT COMPENSATION COMMITTEE
THURSDAY, JANUARY 21, 1999

REFEREE AND/OR COMPENSATION STAFF	SOLICITOR	NUMBER OF CLAIMANTS	TOTAL
Evan Shapiro	Johanne L. Bezaire (Discipline Suspension May 23, 1996)	2	$8,500.00
	Solicitor #3 (Suspended Non-Payment LPIC Fees June 1, 1993)	2	$9,955.00
	Solicitor #10 (Suspended Non-Payment Annual Fee June 1, 1998- Discipline Pending)	2	$3,550.00
	Peter Piroth (Permission to Resign April 23, 1998)	2	$4,481.92
	Solicitor #32 (Excused Fee - Rule 50 - September 27, 1996)	2	$9,653.00
	Solicitor #35 (Suspended Non-Payment LPIC Fees December 31, 1995- Discipline Pending)	1	$1,500.00
	Solicitor #20 (Suspended Non-Payment LPIC Fees November 30, 1998- Discipline Pending)	2	$2,366.66
	Solicitor #17 (Suspended Non-Payment of Annual Fees May 1, 1997- Discipline Pending)	1	$3,075.00

APPENDIX "B"

GRANTS APPROVED BY THE REVIEW COMMITTEE, APPEAL COMMITTEE AND BY THE LAWYERS FUND FOR CLIENT COMPENSATION COMMITTEE
THURSDAY, JANUARY 21, 1999

REFEREE AND/OR COMPENSATION STAFF	SOLICITOR	NUMBER OF CLAIMANTS	TOTAL
	Solicitor #16 (Discipline Pending)	1	$2,000.00
	Solicitor #28 (Suspended Non-Payment LPIC Fees December 2, 1994 - Discipline Pending)	1	$14,150.00
	Harvey Hacker (Resumed practice April 23, 1998 following 15 month suspension)	1	$52,000.00
	Kenneth Ross Bruce (Permitted to Resign November 27, 1997)	2	$5,140.12
	TOTAL GRANTS PAID	127	$3,070,673.12

Attached to the original Report in Convocation file, copies of:

Copies of the 1998 Year End Fund Statistics. (Appendix 'A')

It was moved by Mr. Ruby, seconded by Mr. Wilson that the following recommendations set out in the Report be adopted:

THAT the wording of Guideline 12 not be revised as set out in paragraph 7 on page 5 of the Report; and

THAT the wording of Guideline 14 not be changed as set out in paragraph 14 on page 7 of the Report.

Carried

THE REPORT WAS ADOPTED

REPORT OF THE LAWYERS FUND FOR CLIENT COMPENSATION COMMITTEE

REPORT #2

The Lawyers Fund for Client Compensation Committee
March 26, 1999

Report #2 to Convocation

Purpose of Report: Information

TABLE OF CONTENTS

TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Lawyers Fund for Client Compensation Committee ("the Committee") met on March 11, 1999. In attendance were:

Clayton Ruby (Chair)
Robert Aaron (Vice Chair)
Nora Angeles
Stephen Bindman
Abdul Chahbar
Paul Copeland
Marshall Crowe
Gary Lloyd Gottlieb, Q.C.
Robert Topp

Staff: Sara Hickling, Maria Loukidelis, David McKillop, Evan Shapiro and Jim Yakimovich.

2. This report contains:

- the Committee's information report on investment claims to the Fund and measures designed to prevent or reduce such claims including:
  - mandatory audited financial statements
  - mandatory participation in Practice Review Program
  - a Two Lawyer Rule for certain private mortgage transactions;
- the Committee's information report on other alternatives to reduce the financial burdens on the Fund.

I. INVESTMENT CLAIMS TO THE LAWYERS FUND FOR CLIENT COMPENSATION

A. NATURE AND SCOPE OF THE ISSUE

1. Investment type claims have always had a significant impact on the Fund, both in terms of the resources required to administer the large number of claims and the money needed to pay legitimate claims. The most common form of investment claim occurs when a client utilizes the services of a lawyer in order to invest in mortgages registered against real property.

2. Investment type claims have traditionally represented about 70% to 75% of all claims received by the Fund. Clients typically submit investment claims when the investment turns out to be a partial or total failure and it is learned the lawyer's dishonest acts were largely responsible for the loss.

3. Robert Topp, a member of the Review Sub-Committee, has recently expressed concern about the number and magnitude of investment type claims to the Fund. His concern has largely been heightened by the claims being received on account of Solicitor #15 [members who have yet to complete the discipline process are identified by number to prevent allegations of bias]. Solicitor #15 was a sole practitioner in the GTA who was very active in placing mortgage monies for clients. Gross claims to the Fund on account of this member total $13 million. Thus far, $2.7 million has been paid to claimants and it is estimated total grant payments will be $5 million by the time all claim files are dealt with.

4. Mr. Topp wished the Committee to discuss the treatment of investment claims in general and mortgage claims in particular and whether the Fund should be addressing investment claims at all.

5. At the Committee's last meeting held January 21st 1999, a motion was introduced by Mr. Cass, seconded by Mr. Farquharson, that the per lawyer limit, eliminated in 1988, be reintroduced with a new limit of $2 million. While individual claimants are limited to a maximum grant of $100,000, at present there is no limit on the amount that may be paid out an account of any one dishonest lawyer. The per lawyer limit was $1 million at the time it was rescinded. The motion was not carried by a vote of 5 to 4.

6. A motion was then introduced by Mr. Topp, seconded by Ms. Backhouse, that staff prepare a report on various alternatives that could be introduced to address the problem of investment claims to the Lawyers Fund for Client Compensation. Areas to be examined include per lawyer limits, special limits for investment claims, protection afforded investors in other industries and professions, the 'Two Lawyer Rule', etc. The motion carried by a vote of 4 to 1.

7. The committee considered staff's report at its meeting held on March 11, 1999. The Committee elected to refer selected items from the staff report to other committees. The topics canvassed in the balance of the staff report are summarized at the end of this report.

B. SPOT AND FOCUSSED AUDITS

8. Jim Yakimovich, the Director of Audit and Investigation, attended the meeting and updated members of the Committee on the results of the Spot and Focussed Audits conducted since the inception of the program. While the program is overseen by the Professional Regulation Committee, it is funded by the Lawyers Fund for Client Compensation. As the Committee believes that the program is an important component of the Fund's loss prevention scheme, it appreciates receiving these updates and considering suggestions and improvements to the program.

Incidences of Filing False or Misleading Annual Reports

9. Mr. Yakimovich reported to the Committee that the spot and focussed audits are uncovering incidents of members who are filing false or misleading annual reports with the Society. Prosecutions for filing a false or misleading report are anticipated.

10. Members of the Committee were very concerned about this revelation. The information contained in members' annual reports is used to identify members who undertake certain 'high risk' activities. In appropriate circumstances, these members are scheduled for a focussed audit. If members are not reporting their activities accurately, their chances of being selected for a focussed audit are greatly diminished, if not eliminated.

Secretary May Require Audited Financial Statements

11. It is no longer necessary for members to retain the services of a licenced public accountant in order to complete their annual financial reports to the Society. However, with the passing of the *Law Society Amendment Act, 1998,* the Secretary now has the authority to order an audit for the purpose of determining whether financial records comply with the requirements of the by-laws. Section 49.2 (1) of the Act reads as follows:

> "The Secretary may require an audit to be conducted of the financial records of a member or group of members for the purpose of determining whether they comply with the requirements of the by-laws."

The Committee's View

12. The Committee wishes to see the authority granted to the Secretary under section 49.2 utilized to compel those members who file false or misleading annual reports to submit audited financial reports at their own expense. Depending on the circumstances of the professional misconduct uncovered, the request could be an immediate one as an alternative or complement to a Law Society investigation, or a requirement placed on a member after the conclusion of any discipline proceedings, including a return to practice after suspension or readmission. The Committee felt that members who abuse the self reporting privilege or who are found guilty of even more serious allegations of professional misconduct should be the ones to pay the costs of an audit by a licenced public accountant as opposed to the expense being borne by the Law Society.

13. The Committee recommends that the issue be referred to the Professional Regulation Committee and an examination undertaken and guidelines formulated as to the appropriate circumstances for the Secretary to make an order pursuant to section 49.2 of the *Law Society Act* as amended by the *Law Society Amendment Act, 1998.*

C. PRACTICE REVIEW PROGRAM

14. Related to the Secretary exercising his authority pursuant to section 49.2 of the *Law Society Act*, the Committee also felt that in addition to ordering that a member submit audited financial statements, in certain circumstances it may be appropriate to order a member submit to the Practice Review Program.

Mandatory Nature of Practice Review Program

15. Until the passing of the *Law Society Amendment Act, 1998,* the Law Society was unable to compel a member to submit to the Practice Review Program. If ordered by the Professional Development and Competence Committee, such reviews are now mandatory. The applicable section of the *Law Society Act* is 49.4 and it reads as follows:

> Subject to section 49.6, the chair or a vice-chair of the standing committee of Convocation responsible for professional competence shall direct that a review of a member's practice be conducted under section 42 if the circumstances prescribed by the by-laws exist. [s. 49.6 deals with practice reviews for benchers]

The by-laws are currently being drafted by the Professional Development and Competence Committee but are expected to be sufficiently broad to encompass a situation where the member files a false or misleading annual report.

The Committee's View

16. The Committee wishes to see the authority granted to the Professional Development and Competence Committee under section 49.4 utilized to compel those members who file false or misleading annual reports to submit to the Practice Review Program at their own expense. As is the case with compelling audited financial statements, depending on the circumstances of the professional misconduct uncovered, the request could be an immediate one as an alternative or complement to a Law Society investigation, or a requirement placed on a member after the conclusion of any discipline proceedings, including a return to practice after suspension or readmission.

17. The Committee recommends that the issue be referred to the Professional Development and Competence Committee and an examination undertaken and guidelines formulated as to the appropriate circumstances for the Committee to make an order pursuant to section 49.4 of the *Law Society Act* as amended by the *Law Society Amendment Act, 1998.*

D. RISK MANAGEMENT - A TWO LAWYER RULE FOR CERTAIN MORTGAGE TRANSACTIONS

Reasons For A Two Lawyer Rule

18. Currently the Rules of Professional Conduct permit lawyers to act on both sides of private mortgage transactions after adequate disclosure to enable the client to make an informed decision about whether to have the lawyer act despite the presence or possibility of conflict.

19. Arguably financial institutions possess the requisite sophistication to enable them to make informed decisions concerning lawyers acting for both borrower and lender. Private lenders often lack the necessary level of sophistication to make such decisions. Many of these individuals are primarily motivated by the potential for attractive rates of return and the desire to avoid paying legal fees. In such a state of mind, they become easy prey for dishonest lawyers who either avoid explaining the potential for conflict or abuse the inherent power imbalance that often exists between lawyers and their clients.

20. Private mortgages frequently involve brokering fees as well, thus making the lawyer a third 'client' and introducing another level of conflict into the transaction. To ensure the receipt of such fees, the lawyer's interests can become paramount in such situations.

Definition Of A Two Lawyer Rule

21. A two lawyer rule would result in two primary benefits:
    - protect the interests of mortgagee/investor clients;
    - reduce investment related claims to the Fund.

22. The adoption of a two lawyer rule would require an amendment to Rule 23 (Lawyers in Mortgage Transactions) of the Rules of Professional Conduct. The Rule would be amended to prohibit lawyers from acting for both lenders and borrowers other than in limited circumstances. Similar rules in other jurisdictions permit acting for both sides if the lender is an institutional lender, in vendor take back situations, in remote areas where no other lawyer is available, when the mortgage loan is being made on a non-arm's length basis (i.e. from a parent to a child) or when consideration for the mortgage is relatively small.

Experience In Other Jurisdictions

23. The Law Society of British Columbia has had a two lawyer rule in effect for over ten years. The rule was first introduced in response to an early 1980's discipline case involving an unrepresented vendor, and what British Columbia perceived as a major problem in Ontario with the losses that occurred following the recession of the early 1980's. Since the introduction of the rule, they have had only two incidents of mortgage fraud which is a substantial improvement over their pre-rule experience.

24. The British Columbia rule is broader than the proposed Ontario rule as it also prohibits lawyers from acting for both vendor and purchaser in real estate transactions.

25. The Law Society (England and Wales) has also had a two lawyer rule in effect for many years. It feels very strongly there are fundamental conflicts of interest inherent in the transfer of title to real estate or in private mortgage transactions that can not be addressed when a single lawyer represents both clients notwithstanding warnings and obtaining consent to act. In fact, England and Wales are considering expanding the rule to prohibit lawyers acting for both sides in institutional lending situations.

26. The experience in England and Wales has been very positive. They believe it has been effective in reducing both fraud and negligence.

27. While the rule does not eliminate fraud, it reduces the opportunity for it as an 'extra pair of eyes' are reviewing the transaction. Incidences of negligence have been reduced because, with the extra fees generated, there is less incentive for lawyers to cut corners in order to reduce costs. In the final analysis, public protection has been greatly enhanced.

28. The England and Wales rule has been in effect since the early 1970's and is now so established, breaches of the rule are not a major problem. Of the 15,000 applications processed by their Compensation Fund since 1988, fewer than ten have involved an intentional breach of the rule.

Financial Implications Of A Two Lawyer Rule

29. In 1997, staff at the Fund were requested to review their current file inventories and predict the eventual payouts on each claim. The predictions totalled $9.3 million. At that time, claims at limits totalled approximately $15.5 million.

30. Further staff analysis of all the open claims determined that had a two lawyer rule been in place, it would have cost $6.8 million to retire those same claims, a savings of $2.5 million or 27%.

31. Since 1990 the Fund has paid grants totalling $26.4 million. These grants were totally funded by Law Society members and based on an average total of 22,500 levy paying members in the last nine years, each member notionally paid $1,173 or $130 per year to the Society to fund these grants.

32. Had a two lawyer rule been in place during the last nine years and had it resulted in a savings of 27% of grants paid, the Fund would have saved $7.1 million in grant payments or $316 per member in the aggregate or $35 per annum.

33. The draft rule proposed recommends that the Rules of Professional Conduct be amended to provide that no lawyer shall act or continue to act for both lender and borrower in a mortgage transaction unless:

- it is a remote area of Ontario and it is not practical for the lender or the borrower to retain another lawyer.
- the mortgage is a vendor take back mortgage incidental to the transfer of title to real property.
- the lender is a financial institution.
- the face value of the mortgage does not exceed $15,000.
- the lender and the borrower are not at arm's length.

34. It is proposed that Rule 23 (Lawyers in Mortgage Transactions) be amended by deleting under the heading 'Acceptable Mortgage Transactions' paragraphs 7(a) and 7(b) and re-numbering 7(c), (d) and (e) as 7(a), (b) and (c). Paragraph 7 would now read (with the deleted sections noted):

7. A lawyer may engage in the following mortgage transactions in connection with the practice of law:

~~(a) A lawyer may act on behalf of a borrower and a lender but only if the lawyer complies with paragraph 4 of the Commentary to Rule 5;~~

~~(b) a lawyer may introduce a borrower (whether or not a client) to a lender (whether or not a client) and may subsequently act on behalf of either or both parties, but where the lawyer is acting on behalf of both parties the lawyer shall comply with paragraph 4 of the Commentary to Rule 5;~~

(a) a lawyer may invest in mortgages personally or on behalf of a related person or a combination thereof;

(b) a lawyer may deal in mortgages in the capacity of an executor, administrator, committee, trustee of a testamentary or *inter vivos* trust established for purposes other than mortgage investment or pursuant to a power of attorney given for purposes other than exclusively for mortgage investment; and

(c) a lawyer may collect, on behalf of clients, mortgage payments that are made payable in the name of the lawyer pursuant to a written direction to that effect given by the client to the mortgagor provided that such payments are deposited into the lawyer's trust account.

35. A new paragraph 8 is to be inserted after paragraph 7 under the heading 'Prohibition Against Acting for Lender and Borrower in a Mortgage Transaction' and would read as follows:

8 (a) Without limiting paragraph 4 of the Commentary to Rule 5, a lawyer or two or more lawyers practising in partnership or association shall not act for nor otherwise represent both lender and borrower in a mortgage transaction.

2. Provided that representing both parties is otherwise proper, the rule set out in paragraph (a) of this Rule shall not apply if:

(i) in remote areas of the Province of Ontario, there are no other lawyers in the vicinity whom either party can reasonably be expected to retain;

(ii) the lender is selling real property to the borrower and the charge represents part of the purchase price;

(iii) the lender is a bank listed in Schedule I or II to the *Bank Act* (Canada), a licensed insurer, a registered loan or trust corporation, a subsidiary of any of them, a pension fund, provincial savings office, credit union or a league to which the *Credit Unions and Caisses Populaires Act, 1994* applies or any other institution that lends money in the ordinary course of its business;

(iv) the consideration for the mortgage does not exceed $15,000;

(v) the lender and borrower are not at "arm's length" as defined in the *Income Tax Act* (Canada)."

36. The Committee is of the view that the adoption of a Two Lawyer Rule for private mortgage transactions would be a valuable tool in the Fund's loss prevention program. The Committee recommends that the issue together with the proposed draft rule found in paragraphs 34 and 35 above be referred to the Taskforce on Review of the *Rules of Professional Conduct* for study and possible revision of what is currently Rule 23.

II. OTHER ALTERNATIVES TO REDUCE THE FINANCIAL BURDENS ON THE FUND

37. The report prepared by staff on investment claims to the Fund contained several alternatives for reducing the financial burdens on the Fund. These alternatives included re-introducing a per lawyer cap on the Fund, lowering the per claimant limit on investment claims only from $100,000 to $60,000, requiring lawyers who engage in certain high risk activities to be bonded, ceasing to honour claims from clients who have lefts funds with a lawyer for investment purposes and limiting related claimants (i.e. spouses, individuals and their private corporations, etc.) to a single per claimant limit.

38. The Committee took no position on these alternatives. A summary of these alternatives is presented here for information purposes only.

A. A $2 MILLION PER MEMBER CAP

39. Between 1965 and 1987 the Fund had a per member cap in place. The last per member cap was $1 million. In other words, in the period prior to the elimination of the cap, grants paid to all claimants on behalf of any one member could not exceed $1 million.

40. Pursuant to s. 51(6) of the *Law Society Act*, no grant may be paid unless the Society receives written notice of the loss within six months after it comes to the attention of the person suffering the loss. As it is a subjective test, it is not unheard of for claimants to become aware of losses years after they occur. When a cap was in place, the result was that payments to claimants who filed the first claims were being delayed several years if it was anticipated total grants would exceed $1 million.

41. The practical effect of having a cap in place was that in those cases where grant payments were expected to be significant, all claims had to be received and evaluated before any grant payments could be made. If the cap was to be exceeded, all payments would be reduced on a pro rata basis to bring the total under the limit. This resulted in significant delays in payments and vocal criticism of the Law Society; some of it picked up by the media.

42. A new $2 million cap could only apply to grant applications being made against members for which the Fund has yet to make grant payments. To do otherwise would have the effect of treating claimants differently for applications against the same lawyer. For example, the Fund is currently reviewing claims against members for which we have already paid out grants in excess of $2 million. If a cap were to apply to these claimants, they would not be eligible for any grant whatsoever despite the fact that others may have already received substantial grants.

43. There is one former member being dealt with by the Fund where the first claims arrived in 1991. Legitimate claims were still being received as of the writing of this report. Claimants have been exhausting civil remedies (the Fund is a remedy of last resort) or are just discovering the true nature of their losses. Grant payments on behalf of this member have already exceeded $2 million. Had a $2 million cap been in place, some claimants would be waiting seven or eight years to receive payment. The elimination of the $1 million per member cap has had a major impact on the Fund's ability to pay grants to deserving claimants in a timely manner which has virtually eliminated public criticism concerning delays.

44. The absence of a cap has not had a significant impact on the financial integrity of the Fund. Since 1988 there have only been six instances where the Fund has paid in excess of $1 million and in three of those where more than $2 million was paid on behalf of any one member. The largest of the six cost the Fund $2.7 million although this member will cost the Fund approximately $5 million by the time the last claim is dealt with. The remaining five cases cost $2.5 million, $2.5 million, $1.4 million, $1.2 million and $1.1 million respectively. While there have only been three occasions where a $2 million cap would have become a factor, had it been in place since 1988, 500 claimants or approximately 25% of all claimants from the last ten years would have had their grant payments delayed by years.

What is the financial impact had a $2 million per member cap been in place since 1988?

45. Had a $2 million per member cap been in place since 1988 thereby limiting payments on those three occasions when it would have been exceeded, the Fund would have saved approximately $1.7 million or $7.50 per member in each of the last ten years.

46. Any form of cap has the potential of once again delaying grant payments to deserving claimants. If the concern is guarding the Fund against catastrophic loss it should be noted that payments from the Fund are at the absolute discretion of Convocation; there is no legal entitlement to a grant.

47. If faced with a catastrophic loss, Convocation always has the authority to cease paying grants or scale back the amount paid. While this would undoubtedly lead to hardship in certain cases, the harshness of such a ruling could be minimized for the most deserving of the hardship situations on a case by case basis.

Caps In Other Canadian Jurisdictions

48. Saskatchewan, Quebec, Nova Scotia, Newfoundland and the Yukon have retained per member limits ranging from $250,000 to $2 million. Alberta and Prince Edward Island have per member limits of 50% of the balance of their funds. Some U.S. states have set per lawyer limits of 10% of their funds.

B. A LOWER LIMIT FOR INVESTMENT TYPE CLAIMS TO THE FUND

What would be the implication of reducing the current per claimant limit of $100,000 to $60,000 for investment claims only?

49. It has been suggested that a separate limit be implemented for investment type claims. The theory being that clients who, having a profit motive, place funds with a lawyer should be judged more harshly than those who are 'blameless' in terms of suffering their loss. Clients who suffer financial losses due to trust fund misappropriation (including theft of retainers) and LPIC non-reporting would continue to be entitled to the $100,000 per claimant limit. Losses resulting from clients having invested in mortgages, limited partnerships, equities, debt instruments (i.e. promissory notes), etc., would be limited to a $60,000 recovery. Such investment claims would continue to be subject to further deductions on account of Guideline 6 (risk) and Guideline 7 (carelessness).

50. An examination of all grants paid in investment related claims where the funds were advanced to the lawyer after May of 1990 [when the limit was raised from $60,000 to $100,000], reveals that had a $60,000 limit been in place the fund would have saved $1.6 million in total or $7.90 per member in each of the last 9 years.

51. As of January 31st 1999 the Fund had claims, with the $100,000 limit for all claims applied, of $14.5 million. If a $60,000 limit were in place for investment claims, the maximum potential pay out falls to $11.3 million or a decrease of $3.2 million.

C. BONDING OF LAWYERS

52. The bonding of lawyers was considered when the Law Society established the Compensation Fund in 1953. Bonding was rejected then in favour of the establishment of the Fund for reasons which are still valid today. If lawyers were required to take out bonds in order to practise law, or to practise in certain areas, the licensing of the profession would, effectively, be abdicated to the bonding companies.

53. It would not be known upon what basis bonding companies select those for whom they would provide bonds, or those who would be denied them. When a loss occurred, the bonding companies could be expected to resist payment and to rely upon technical defences in any action brought under the bonding contract. They would not exercise a discretion in favour of those who had suffered extreme hardship or were particularly deserving of special treatment. Claimants would also be put to the expense of collecting under the bond.

54. The Society also recognized that any bonding company would only provide a bond so long as it could foresee realizing a profit. As the Law Society had the whole of the profession to call upon to maintain the Fund, it considered the Fund the preferable method of public protection because what would otherwise have provided a profit for the bonding company could increase the amount available in the Fund.

55. The last time an inquiry was made with a bonding company was in 1992. At that time a lawyer could expect to pay USD$295 for $500,000 coverage with no deductible. The current Fund levy is CAD$200 for coverage that can exceed $500,000.

56. Notwithstanding the problems with bonding, it would be possible to insist that members who accept funds from clients for investment purposes carry a minimum level of bond coverage. The Fund could then, in essence, become an excess carrier and accept claims from those individuals who recover nothing under the bond because its limit had been surpassed or who only made a partial recovery.

D. CEASING TO HONOUR CLAIMS FROM CLIENTS WHO HAVE LEFT FUNDS WITH A LAWYER FOR INVESTMENT PURPOSES

Investment Claims No longer Accepted In New Zealand And South Africa

57. In response to a significant increase in claims resulting from the investment of client funds, in 1993 New Zealand's Solicitors' Fidelity Guarantee Fund amended its legislation such that the Fund is no longer available to reimburse losses relating to money which a practitioner has been instructed to invest.

58. The Law Society of New Zealand's Rules were correspondingly amended to require practitioners to warn clients that investment monies would not be covered by the Fund. Failure to notify clients is not sufficient grounds to permit their Fund to deal with a claim which would otherwise be ineligible for a grant.

59. South Africa recently adopted a similar regime with regards to investment claims. That country amended its legislation effective January 15th 1999 such that the various provincial funds no longer cover losses suffered in consequence of the theft of funds entrusted to lawyers for investment purposes. Investment practices are still permitted, although they are strictly regulated.

60. In both of these jurisdictions, it was felt that the losses being experienced by their respective funds were no longer sustainable on the backs of the honest practitioner. This step has been taken notwithstanding the fact that investing funds for clients, particularly in mortgages, had become an accepted part of the practise of law.

61. As stated at the beginning of this report, investment related claims have typically accounted for 70 to 75% of both claims made and paid. As also previously stated, since 1990 the Fund has paid grants totalling $26.4 million. If even 60% of that total could have been saved, it would have resulted in a savings of $15.8 million. This equates to $700 for each of the, on average, 22,500 fee paying members of the Society or roughly $78 per member per year in each of the last nine years.

E. TREATMENT OF CLAIMS BY AN INDIVIDUAL AND HIS/HER PERSONAL CORPORATION

62. Prior to the early 1990's, related individuals and corporations were permitted a grant only up to the individual per claimant limit notwithstanding the existence of more than one "client". The most common examples are joint claims from spouses. A large number of investment related claims to the Fund come as the result of spouses becoming involved in a joint investment. Prior to 1990, the loss of these investment funds would be considered a single claim from a single claimant and therefore only entitled to the then existing per claimant limit. Following a 1990 decision of the Appeal Sub-Committee, spouses have each been entitled to the benefit of the per claimant limit.

63. Today, the effect of that decision means that a couple having invested $200,000 in a mortgage that is ultimately lost could receive a grant equal to 100% of their loss. If an individual had made that same investment, at best he or she could recover 50% of their loss or $100,000.

Individuals And Personal Corporations

64. An analogous situation presents itself where an individual and a personal/family corporation make separate claims. It is not uncommon for the Fund to receive claims where an individual has entered into an investment with a lawyer and a similar investment has been made under the name of a private corporation controlled by the same individual. As is the case with spouses, as long as both are considered "separate legal entities" and the funds originated from separate accounts, each would be entitled to separate limits.

65. A return to the situation as it was prior to 1990 will place the emphasis on the discretionary philosophy of the Fund as opposed to how separate claimants should be treated in law.

Financial Impact

66. It is difficult to predict the savings to the Fund that could be realized through limiting related claimants to a single limit. The Fund's computer system does not track related claimants. However, it is safe to say that the savings would be in the hundreds of thousands of dollars each year.

.....

It was moved by Mr. Aaron, seconded by Mr. Gottlieb that the item re: a Two Lawyer Rule for certain mortgage transactions, be tabled.

Lost

THE REPORT WAS RECEIVED

REPORT OF THE FINANCE AND AUDIT COMMITTEE

Re: Combined Errors and Omissions Fund Financial Statements

Mr. Swaye presented the Report of the Finance and Audit Committee for approval.

Finance and Audit Committee
March 11, 1999

Report to Convocation

Purpose of Report: Decision Making, Information

TABLE OF CONTENTS

TERMS OF REFERENCE/COMMITTEE PROCESS

The Finance and Audit Committee ("the Committee") met on March 11, 1999. In attendance were V. Krishna (Chair), A. Chahbar, T. Cole, E. DelZotto, P. Furlong, C. Ruby, and G. Swaye. Staff members in attendance were J. Saso, W. Tysall, D. Carey, K. Corrick, F. Grady, and R. White. Also in attendance was Michelle Strom of the Lawyers' Professional Indemnity Company.

1. The Committee has one matter that requires Convocation's approval:

   - the Combined Errors and Omissions Insurance Fund financial statements for the year ended December 31, 1998.

2. Michelle Strom of the Lawyers' Professional Indemnity Company attended the meeting and presented the Combined Errors and Omissions Fund and Lawyers' Professional Indemnity Company financial statements for the year ended December 31, 1998 (pages 18 - 50).

3. The Combined Errors and Omissions Insurance Fund results are tracking well within expectations and the stand-alone deficit will be retired during the first quarter of 1999 from the remaining 1998 transaction and volume levy surcharges.

4. At the end of December 1998, the combined funds hold investment assets of $224.3 million

5. The Committee recommends that Convocation approve the Combined Errors and Omissions Fund financial statements for the year ended December 31, 1998.

6. The Committee is reporting on the following matters:

- Investment Compliance Report for the year ended December 31, 1998, and
- the General Fund and Lawyers Fund for Client Compensation draft unaudited financial statements for the year ended December 31, 1998.

7. The Committee received, reviewed and accepted the Investment Compliance Report for the General Fund and the Lawyers Fund for Client Compensation for the year ended December 31, 1998 (pages 5 - 17).

8. The Committee was presented with the draft unaudited financial statements for the year ended December 31, 1998 and was given summary highlights for the year.

9. All in all, the General Fund is in good financial condition. Total assets are $30.5 million and total liabilities are $7.4 million. The $23.1 million difference between the assets and liabilities is invested in capital assets and restricted funds.

10. The General Fund operating surplus for the year is $2.76 million. Salary and benefit expenses were $1.1 million less than budgeted for the 1998 year. General administrative expenses were $300,000 under budget while allowing for funding support of the Ontario Bar Assistance/Alcohol Program. Investment income exceeded expectations by $650,000 as the result of a better than anticipated rate of return, the receipt of annual fee revenues earlier in the year than budgeted and the balances available in restricted funds.

11. In addition, in 1998 the Society created restricted, or reserve, accounts that will enable the Society to fund the organizational and technological changes taking place through Project 200, and to ensure that the historical integrity of Osgoode Hall is not impaired. As well, a $1.8 million County Library Levy Fund is being held and is available for the use of County and District Libraries. The total monies available in all restricted funds is $5 million.

12. The Legal Aid Levy Fund accumulated deficit of $189,000 along with the Society's last three month share of assessable administrative expenses will be funded from member levies budgeted for 1999. Funding obligations for Legal Aid assessable administrative expenses will end after March 31, 1999, the end date of the Legal Aid Act and the Memorandum of Understanding.

13. Also, with respect to the 1999 Budget, the Society has received confirmation of funding from the Law Foundation of Ontario. The Society budgeted to receive $1.063 million for Bar Admission Course purposes and $557,000 for County Library purposes. The Law Foundation granted the Bar Admission Course request at $1.063 million and increased the County Library funding to $850,000. It is expected the Law Foundation of Ontario will confirm the same funding levels for the years 2000 and 2001. Also confirmed was three years of funding for an Archives assistant.

14. The Society will receive $3.6 million from the Errors and Omissions Investment Income Surplus in 1999 as planned.

15. The Lawyers Fund for Client Compensation is also in good financial condition. Total assets are $23 million with total liabilities of $11.2 million. The fund balance, or unencumbered funds, is $11.8 million. Looking to the future it appears that the levy does not need to increase in order for the Fund to remain healthy.

Attached to the original Report in Convocation file, copies of:

(1) Copy of the Investment Compliance Report for the General Fund and the Lawyers Fund for Client Compensation for the year ended December 31, 1998. (Pages 5 - 17)

(2) Copy of the Combined Errors and Omissions Fund and Lawyers Professional Indemnity Company financial statements for the year ended December 31, 1998. (Pages 18 - 50)

It was moved by Mr. Swaye, seconded by Mr. Ruby that the Combined Errors and Omissions Fund financial statements for the year ended December 31st, 1998 be approved.

Carried

THE REPORT WAS ADOPTED

Convocation expressed its appreciation of the good job done by Dave Carey, Director of Finance who was leaving in April after 9 years at the Law Society.

REPORT FOR INFORMATION ONLY

Treasurer's Equity Advisory Group Report

Treasurer's Equity Advisory Group
March 10, 1999

Report to Convocation

Purpose of Report: Information

TABLE OF CONTENTS

February 25, 1999

Introduction:

1. As part of the CEO's Second and Third Quarter Report to Convocation, April - September 1998, the appointment of the Equity Advisor, Charles Smith, late in the third quarter of 1998 was noted. In this context, the report identified that the Equity Advisor will spearhead initiatives in compliance with the 1997 Bicentennial Report on Equity Issues in the Legal Profession and, further, provide Convocation with regular reports on the effectiveness of current and future equity and diversity initiatives.

2. This report provides a summary of the Workplan to Implement Equity Initiatives prepared by the Equity Advisor in consultation with the Senior Management and Middle Management Teams. The report identifies specific issues to be addressed, timeframes for implementation, accountability mechanisms and identification of further issues requiring Convocation's consideration.

Background:

3. In June, 1997 Convocation unanimously adopted the Bicentennial Report on Equity Issues within the Legal Profession . This report had sixteen recommendations which were categorized into six theme areas: (1) Policy Making by Convocation; (2) Advancing Equity and Diversity Within LSUC and the Legal Profession; (3) Governance of Convocation; (4) Education; (5) Regulation; and (6) Employment and Contracting for Legal Services.

4. Following adoption of this report, the LSUC undertook to recruit an Equity Advisor to implement the recommendations within this report and to act as a catalyst within the Law Society to ensure ongoing monitoring of and attention to issues of equity and diversity as they affect the legal profession. The Treasurer also established the Treasurer's Equity Advisory Group (TEAG) to support and advise Convocation on critical equity issues.

5. The Equity Advisor recruitment was completed with the Advisor joining the LSUC in late November, 1998. Since that time, the Equity Advisor has been providing support to TEAG and developing a workplan for ongoing implementation of equity issues by LSUC and within the legal profession.

Vision:

6. As stated in the recommendations of the Bicentennial Report on Equity Issues in the Legal Profession "Through its policy statements the Law Society has already made a commitment to the goals of eliminating discriminatory practices and achieving equity and diversity within the legal profession. Despite this commitment, all the information received to date indicates that members of our profession continue to regularly face barriers because of personal characteristics unrelated to competence."

7. This statement acknowledges the LSUC commitment to develop and implement positive action while, simultaneously, receiving ongoing information about the barriers to opportunities faced by members of the profession, particularly those from equity-seeking communities. In this context, it is incumbent on the LSUC to be guided by a clear vision statement that takes these two perspectives into consideration.

8. The LSUC has also adopted Rules of Professional Conduct to directly address sexual harassment and discrimination. Sections 27 and 28 are consistently referenced in the Bicentennial Report and, as such, its principles are incorporated in the following vision statement.

9. The vision for the implementing the Bicentennial Report will be:

> The Province of Ontario is made up of people from diverse communities, including Francophones, Aboriginal peoples and equity-seeking groups, i.e., women, people with disabilities, ethnocultural and racial minorities, immigrants and refugees, lesbians, gays, bisexuals, transgenders and people with low incomes as well as people with different religious customs, beliefs and faiths.
>
> Given the diversity of the population of Ontario, the Law Society of Upper Canada will recognize the dignity and worth of all people through the treatment of its members, its employees and the community at-large. This will be done by ensuring inclusion and equity within the Law Society's policies, decision-making, provision of services, employment conditions, contracting of goods and services as well as public and community relations.
>
> The Law Society of Upper Canada recognizes and respects the autonomy of Aboriginal peoples and their inherent right to self-determination and self-government.
>
> The Law Society also recognizes that there are barriers imposed by harassment, discrimination and disadvantage faced by Francophones, Aboriginal peoples and equity-seeking communities within society and within the legal profession.
>
> The Law Society of Upper Canada acknowledges its role and responsibility as the governor of the legal profession in the public interest and its capacities as a policy-maker, resource to the public and to the profession, regulator, educator and employer. In this context, the Law Society of Upper Canada will strive to create an environment of equality within the legal profession for all people regardless of their race, creed, age, ancestry, language, nationality, place of origin, ethnic origin, Aboriginal status, disability, gender, gender identity, sexual orientation, political affiliation and socio-economic status.
>
> The Law Society of Upper Canada will implement positive changes within its workplace and within the legal profession to achieve equality of outcomes for Francophones, Aboriginal peoples and equity-seeking groups with the aim of ensuring that its workplace and the profession are free from harassment and discrimination.

Workplan:

10. The workplan put forward in this report identifies a process and timeframes to develop equity and diversity action plans that will incorporate and expand upon the Bicentennial Report's recommendations. The workplan includes addressing urgent issues requiring Convocation consideration within 1999 and a process for developing equity and diversity plans by all LSUC departments.

11. Highlights of the workplan include:

- reviewing policies brought before Convocation to ensure they promote equity and diversity and do not have a discriminatory impact. In this context, the Equity Advisor is working with staff addressing the Rules of Professional Conduct and the Bar Admissions Course Review. This is consistent with Recommendation #1 of the Bicentennial Report which requires all policies to be non-discriminatory and to promote equity and diversity. Timeframe: Ongoing;

- conducting a survey of the legal profession to determine the relative success of Aboriginal, Francophone and equity-seeking lawyers and strategies that may be required to improve their success. The Equity Advisor will work with the Chief Information Officer on this matter to develop an appropriate data-base for collection of information. Timeframe: March - December, 1999;

- working with TEAG to examine best ways of improving participation of equity-seeking communities within the governance of the profession. Timeframe: April - June, 1999;

- developing strategies on an inclusive curriculum and examinations process for Bar Admissions. This is being done in the context of the Bar Admissions Reform process with the Acting Director of Education. Timeframe: February - June, 1999;

- developing strategies on equity in articling and employment within the legal profession. This will be done with the Acting Director of Education and Acting Director of Articling. Timeframe: April - December, 1999;

- developing model equity and diversity policies, practices and programs for dissemination to the legal profession. Timeframe: March - October, 1999;

- developing equity action plans by all LSUC departments, programs and functions. To guide workplan implementation, a planning format identifying each recommendation will be used consisting of goals, responsibilities, action required, budget, timeframes, anticipated outcomes and evaluation criteria. Timeframe: February - November, 1999;

- assessing the impact of LSUC contract compliance initiatives and developing further options for continued action in this area. This will be done in cooperation with the Chief Financial Officer and representatives of LPIC. Timeframe: March - December, 1999.

12. In addition to the above, the Equity Advisor will:

- work with TEAG in the Bencher Election Information Program which has been set up to promote interest by those within the legal profession to seek election to Convocation. This work has already been coordinated with information sessions taking place in Ottawa, Toronto, Windsor and London respectively on January 27, February 2, February 8 and February 15. A report on the success of this initiative has been submitted to the Treasurer's Equity Advisory Group by the Equity Advisor;

- work with TEAG in selecting an ombudsperson to respond to discrimination and harassment complaints under the current Rules of Professional Conduct 27 and 28 and in compliance with the Report of the Systems Design Team adopted by Convocation in October 1998. This is being done in partnership with staff from the Practice Advisory services. Timeframe: January - March, 1999.;

- work with TEAG in identifying and addressing issues that may be of concern to the legal profession. In this context, TEAG is considering convening consultations with equity-seeking communities to identify issues requiring attention and action by Convocation. Timeframe: ongoing;

- spearhead the convening of LSUC and Convocation events to celebrate or commemorate days of significance to Aboriginal, Francophone and equity-seeking communities promoting social justice and equality issues. This initiative has been approved by Convocation in January, 1999. Timeframe: throughout 1999.

Timeframes and Follow-up:
13. Several of the items identified in the workplan will require follow-up and some matters will be of an ongoing nature. Follow-up items will be reported on as required to Convocation either for decision-making or for information. Ongoing initiatives will be evaluated annually to assess their effectiveness and usefulness.

Conclusion:
14. The LSUC Equity workplan is now being implemented as reported. Guided by the Equity Advisor, each LSUC department is undertaking to develop action plans and the Equity Advisor is initiating specific research on equity issues within the legal profession. Public education events are now and will be coordinated throughout the upcoming year to promote equity and diversity in the legal profession and progress reports will be submitted to Convocation to keep it advised of developments and key issues in equity implementation.

John Saso
Chief Executive Officer

Results of Bencher Election Information Sessions

Introduction:
1. On January 6, 1999, the Treasurer's Equity Advisory Group approved plans submitted by the Equity Advisor on convening Bencher Election Information Sessions in Ottawa, Toronto, Windsor and London. The Bencher Election initiative had been developed by TEAG in 1998 as a mechanism to encourage greater participation by the profession in the democratic process of running for Convocation. In particular, TEAG wished to encourage members of the profession from equity-seeking groups to run for Convocation.

Strategy Employed:
2. To facilitate TEAG's objectives, the Equity Initiatives Department scheduled information sessions in Ottawa for January 27 (chaired by H. Puccini), Toronto for February 2 (chaired by N. Backhouse), Windsor for February 8 (chaired by T. Stomp and H. Strosberg) and London for February 15 (chaired by H. Ross). The Toronto session was also attended by benchers L. Banack and G. Gotlieb. The London session was attended by M. Buist of TEAG.

3. Notice of the sessions was sent to members via fax one week prior to the event and each session provided those in attendance with information on both the procedures and requirements for those seeking to be elected as well as information on various strategies employed by elected benchers.

Attendance and Response:
4. Overall, 37 individuals attended the information sessions (8 in Ottawa; 24 in Toronto; 1 in Windsor; and 4 in London). Of these, 12 were women; and 7 appeared to be racial minorities. It must be noted, however, that the personal characteristics are not based on self-identification and are based on my perceptions of those in the room.

5. In addition to those attending the information session, my office received 15 phone calls from individuals who could not attend but were interested in receiving nomination forms. All such calls were referred to the Secretary or to the Manager, Government Relations for follow-up.

Next Steps:
6. Given the numbers noted above, it is clear that this initiative was successful. However, there was low turnout in Windsor and London which must be considered. Also, the turnout of equity-seeking groups within the profession was not as high as had been anticipated. With this in mind, in terms of follow-up, I am recommending that TEAG:

a) monitor the election to see the outcome in terms of success by equity-seeking group candidates, eg., the number who run and get elected; and
b) convene a consultation with equity-seeking groups in the legal profession to discuss the importance of participating in Convocation's decision-making process and increasing participation in the next election for Convocation.

7. The latter recommendation comes from the Bicentennial Report on Equity Issues in the Legal Profession, Recommendation 7: Participation in the Governance of the Profession, which states: "In furtherance of its commitment that governance of the profession encompass a wide and diverse representation of groups within the profession: (a) Convocation should review the process for appointment to committees, task forces, and working groups to ensure that it is formalized to include measures that remove barriers to participation that would affect participants on the basis of personal characteristics noted in Rule 28; and (b) Convocation should review the demands on benchers to determine what steps can and should be taken to promote the participation of diverse groups (including equality-seeking groups) in the governance of the legal profession."

8. The purpose of the consultation session will be to develop recommendations on the above for consideration by Convocation and to continue the process of building involvement by equity-seeking groups within the profession in Convocation decision-making. To facilitate this, invitations will be sent to associations within the legal community which self-identify their equity-seeking group status, eg., CBAO Equity and Diversity Committee or Canadian Association of Black Lawyers.

9. It is proposed that such a session be held in May or June of this year.

Recruitment of Discrimination/Harassment Ombudsman

Introduction:

1. At the February 11, 1999 TEAG meeting, the attached report on the above was provided for consideration. There was overall approval to the recommended strategy and outline for recruitment of the Discrimination/Harassment; however, there was significant concern regarding the implications of the Rules of Professional Conduct (Rule 13: Responsibility to the Profession Generally). Some members felt that the obligations of this Rule will have an adverse impact on those who may need the support services of the Ombudsperson.

2. In response to these concerns, staff agreed to seek advice from the British Columbia Ombudsperson, review Rule 13 and then report back to TEAG at its next meeting. In addition, D. Elliot and N. Gupta agreed to join the subcommittee with J. Keene and K. Morris to work with staff in the recruitment process.

Policy Issue:

3. The Law Society of British Columbia established an Ombudsperson in 1995. A free service, this office confidentially assists anyone in a B.C. law firm who asks for help in resolving a complaint of discrimination or harassment against a lawyer. The Ombudsperson's role is to help people solve their problems, provide them with information about options to do so and, when requested, provide mediation services.

4. In terms of confidentiality, the Ombudsperson has no authority to investigate complaints and, therefore, does not make contact with either the alleged harasser or with the Law Society of British Columbia without the express permission of the complainant. The Benchers of the Law Society of British Columbia have recently passed a new rule that provides that:

- communication with the Ombudsperson is confidential and must remain so;
- the Ombudsperson must maintain confidentiality of all matters;
- the Ombudsperson cannot be compelled to give evidence in a discipline hearing; and
- no records produced by, under the direction of or in the possession of the Ombudsperson can be admitted in evidence or disclosed under discipline procedure rules.

The appropriate Rules from the Law Society of British Columbia are attached.

5. In reviewing Rule 13, careful consideration has been given to the Commentary 1A which states: "Often instances of improper misconduct arise from emotional, mental or family disturbances or substance abuse. Lawyers who suffer from such problems should be encouraged to seek assistance as early as possible. The Law Society of Upper Canada supports the Ontario Bar Assistance Program (OBAP), LINK and other support groups in their commitment to the provision of counselling on a confidential basis. Therefore, lawyers acting in the capacity for OBAP and other support groups will not be called by the Law Society or by any investigation committee to testify at any discipline or competency hearing without the consent of the lawyer from whom the information is received."

6. Clearly supportive of the approach taken by the British Columbia Law Society, Section 1A appears to be the policy framework which may be used to provide the Ombudsperson with a degree of confidentiality supportive of unimpeded client disclosure. However, it must be noted that the aforementioned Commentary was adopted for purposes specific to OBAP and LINK, and that while the Ombudsperson was discussed at the time this Commentary to Rule 13 was amended, this position was not included in the Commentary.

7. Given the current process to revise the Rules of Professional Conduct, I recommend that TEAG refer this matter for consideration to the Task Force that is currently revising the Rules of Professional Conduct, chaired by Gavin McKenzie and Derry Miller, and encourage them to include the Ombudsperson within the terms of Commentary Section 1A to Rule 13.

Conclusion:
8. The policy issue regarding confidentiality and the Ombudsperson's services can be addressed by the Task Force on Revisions to the Rules of Professional Conduct. Further, these points will need to be reflected in recruitment process both in terms of shortlisting and subsequent interviews. The call for proposals for the Discrimination/Harassment Ombudsperson are also attached.

February 1, 1999

Introduction:

1. At its meeting on January 6, 1999, the Treasurer's Equity Advisory Group (TEAG) received a report from the Equity Advisor regarding the recruitment and selection of a Discrimination/Harassment Ombudsperson. This position was established by Convocation in the October, 1998 as part of the Alternative Dispute Resolution Program (ADR) which is now being piloted by the LSUC.

2. In response to recommendations of the Equity Advisor, TEAG established a subcommittee to draft selection criteria and propose a recruitment process for this position. The subcommittee consisted of Judith Keene, Helene Bruce Puccini, Kimberley Morris, Felecia Smith and Charles Smith. The subcommittee met on Tuesday, January 26, 1999 and developed the following report for consideration by TEAG.

Background:
3. In reviewing its mandate, the subcommittee established three main areas for the development of proposals for TEAG. These areas are: (1) selection criteria, including responsibilities, for the Discrimination/Harassment Ombudsperson; (2) a recruitment process for this position; (3) the reporting requirements and relationships for the position; and (4) informing the public and the profession about the availability of and access to the service.

4. These areas were seen as essential to the effective operation of the Ombudsperson as they define the job to be done, the scope of responsibilities/obligations of the position and the LSUC, the promotion of the Ombudsperson, and, the reporting relationships for the Ombudsperson and LSUC staff. Each of these are described below.

Selection Criteria:
5. It is proposed that the Ombudsperson be responsible for dealing with persons who bring forward allegations regarding violations of Convocation Rules of Professional Conduct 27 and 28. The purpose of the Ombudsperson is to provide a point of reference for lawyers, students, staff in law offices and service consumers regarding complaints on these matters. The position is established as 'safe counsel', someone to whom a complainant can convey concerns and seek guidance on ways to respond to alleged violations Rules 27 and 28 or the Ontario Human Rights Code.

6. In performing an intake and referral function, the Ombudsperson will strive to maintain confidentiality in dealing with complainants. However, the Ombudsperson, particularly if a lawyer, must respect Rule 13 "Responsibility to the Profession Generally". The Ombudsperson may also be subpoenaed if a matter proceeds to a Human Rights Tribunal or is pursued in the courts. Further, the Ombudsperson is required to provide semi-annual and annual reports to the LSUC providing both anecdotal information and aggregate data on complaints received and how they were handled. In addition, based on anecdotal and aggregate data, the Ombudsperson will be obligated to make recommendations to the LSUC on the types of policies, programs and services required to promote non-discrimination within the legal profession.

7. In this context, the Ombudsperson must be:

- knowledgeable of equality rights legislation, particularly the Ontario Human Rights Code, as well as the LSUC Rules of Professional Conduct, particularly rules 27 and 28;
- knowledgeable of various conflict resolution techniques including mediation, complaints investigations and legal actions through the courts;
- knowledgeable of the LSUC ADR program and processes;
- knowledgeable of diverse equity-seeking communities and the issues they face in dealing with the legal profession;
- aware of and have contacts with resources, individual or institutional, for referral purposes in dealing with complainants for either mediation or formal complaints;
- able to analyse anecdotal and aggregate data to identify trends, if any, and to make recommendations on these to the LSUC;
- sensitive to particularly vulnerable individuals and groups;
- able to provide services to complainants throughout the Province of Ontario.

Recruitment Process:
8. The LSUC will initiate and carry-out recruiting for this position. The recruitment campaign will be coordinated by the Equity Advisor and will include posting notices to the profession through the LSUC Web-Site, the Gazette, the Ontario Reports and to the general public through daily as well as community media and community networks, including legal aid clinics, advocacy and human rights organizations and so on.

9. The recruitment process will begin the week of February 15, 1999 and the final date for submission of resumes for the position will be Friday, March 5, 1999. The TEAG subcommittee will assist in shortlisting, interviewing and recommending selection for this position. It is anticipated that the Ombudsperson will be in place during April, 1999.

Reporting Requirements:
10. In responding to the "Bicentennial Report on Equity Issues in the Legal Profession", the LSUC established the position of Equity Advisor as part of the Society's senior management team and directly responsible for promoting equity and diversity within the legal profession. There is some overlap between the Equity Advisor's responsibilities and mandate and the recently established Ombudsperson position which has been set-up on a contractual basis and is focussed solely on supporting complainants alleging violations of Rules 27 and 28 or the OHRC.

11. There is no doubt that the Ombudsperson position is an integral component to the LSUC's concerns about equity and diversity within the legal profession. As such, given the close relationship in terms of program and function, the Ombudsperson will report to the LSUC's Equity Advisor who, in turn, will report to the TEAG as well as the Professional Regulation Committee and the Professional, and the Professional Development and Competence Committee. Such reports will provide anecdotal information and aggregate data and provide recommendations on promoting non-discrimination within the legal profession. This will ensure: consistency in programming by both the Equity Advisor and the Ombudsperson; a voice within senior management, through the Equity Advisor, for the issues brought forward by the Ombudsperson; opportunities to develop short- and long-term responses on promoting equity and diversity in the legal profession; a reporting relationship for the Ombudsperson, through the Equity Advisor, to appropriate committees of Convocation. This arrangement is similar to those in B.C. and Nova Scotia where there is both an Ombudsperson on contract and an Equity Advisor.

12. In receiving reports from the Ombudsperson, the Equity Advisor will consult with LSUC Practice Advisory staff to ensure an appropriate response to such reports are integrated into the functions of LSUC. Consultation and program development with appropriate LSUC staff will also take place to address issues brought forward by the Ombudsperson that require policy and/or program development by Practice Advisory, the regulatory area, complaints and so on.

Promotion of the Position:
13. Once selected, the Ombudsperson will be promoted along with the following resources and materials addressing the LSUC's commitment to equity and diversity:

- the model policies addressing flexible work arrangement, workplace harassment and sexual harassment;
- reissuing of Benchers' Bulletins on Rules 27 and 28;
- the "Bicentennial Report on Equity Issues in the Legal Profession";
- the activities and contact points for the TEAG as well as the Equity Advisor.

14. Correspondence making the profession aware of these resources will be sent out in April, 1999 and correlating information will be placed on the LSUC Web-Site, circulated to students and posted in both the Gazette and the Ontario Reports.

15. Depending on the success on this approach, additional promotional activities may be undertaken.

Request for Endorsation: Lesbian, Gay, Bisexual and Transgendered Questionnaire Project Proposal

Introduction:

The attached letter and project proposal has been sent from the Associate Dean of Osgoode Hall Law School regarding the above. Mr. Fodden is requesting the support and assistance of TEAG for a project that will help lesbian, gay, bisexual and transgendered students in identifying articling opportunities within "queer" positive law firms. The project will also heighten awareness in the legal profession in Toronto to the reality and needs of queer students-at-law.

It is anticipated that the questionnaire, consisting of 15 - 20 questions, will be distributed in April to 250-300 law firms in the Toronto area. The questionnaire will be divided into three areas of inquiry: (1) personnel; (2) policies and practices; and (3) legal practice and clients. There will be no analysis of the completed questionnaire; students will form their own impression of a particular law firm based on the information including in each firm's response.

At this time, Osgoode Hall Law School is seeking support in principle until the final questionnaire is completed and the project ready for implementation. TEAG is also asked to test the questionnaire and review it from a practitioner's perspective. Once the questionnaire is refined, TEAG will be asked to seek formal support from Convocation for official endorsation by the Law Society for this project.

Law Society Context:

The project clearly falls within the mandate and concern of the Law Society as set-out in the Bicentennial Report on Equity Issues in the Legal Profession, particularly Recommendations #2 (p.26), Recommendation #5 (p.27), Recommendation #9 (p.31), and Recommendation #11 (p.32). Respectively, these recommendations state:

Recommendation #2: Study and Research

To facilitate the development of policies, programs and services that further the achievement of equity and diversity within the profession, the Law Society should continue to conduct research on the changing demographics of the profession and the impact on the profession of barriers experienced by members of our profession for reasons unrelated to competence.

Recommendation #5: Resource for the Profession

In order to support the profession in its pursuit of equity and diversity goals, the Law Society should, in cooperation with other organizations, develop and maintain the tools to function as a resource to the profession on the issue of diversity and equity.

Recommendation #9: Articling

The Law Society should continue its efforts to ensure that its articling requirements do not have a disproportionately negative impact on the basis of personal characteristics noted in Rule 28. (N.B. Sexual orientation is included as one of the personal characteristics noted in Rule 28.)

Recommendation #11: Rules of Professional Conduct

The Law Society should ensure that it is effectively meeting its responsibilities as a regulator to eliminate discriminatory practices within the legal profession.

Recommendations:

Given that this project falls squarely within the mandate of the Law Society, I recommend that:

3. TEAG support the project and seek endorsation from Convocation for the Law Society's endorsation;

4. Given the implications to articling that this project will have, I recommend that TEAG bring this matter to Convocation through the Admissions and Equity Committee once the final project questionnaire is ready; and

5. TEAG bring this matter to the attention of the Admissions and Equity Committee and Convocation as an information item for their respective meetings during March, 1999, and for decision in April, 1999.

Attached to the original Report in Convocation file, copies of:

(1) Copy of Report on Recruitment of Discrimination/Harassment Ombudsman.

(2) Copy of letter from Mr. Simon R. Fodden, Associate Dean, York University dated March 1, 1999 re: Lesbian, Gay, Bisexual & Transgendered Questionnaire Project Proposal.

(3) Copy of Project Proposal re: Lesbian, Gay, Bisexual & Transgendered Questionnaire, February 1999.

ORDERS

The following Orders were filed.

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Alexander Ian McMahon of the City of Toronto, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 15th day of October, 1998, in the presence of Counsel for the Society, the Solicitor not being in attendance and not represented by counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Alexander Ian McMahon be suspended for a period of thirty days, commencing at the conclusion of his administrative suspension and continuing thereafter until the required filings have been made.

DATED this 26th day of November, 1998

"H. Strosberg"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Giuseppe Zito, of the City of Sudbury, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 9th day of September, 1998, in the presence of Counsel for the Society, the Solicitor not being in attendance and not represented by counsel, wherein the Solicitor was found guilty of professional misconduct and conduct unbecoming a barrister and solicitor and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Giuseppe Zito be disbarred as a barrister, that his name be struck off the Roll of Solicitors, that his membership in the said Society be cancelled, and that he is hereby prohibited from acting or practising as a barrister and solicitor and from holding himself out as a barrister and solicitor.

DATED this 26th day of November, 1998

"H. Strosberg"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Gary Michael Wellman, of the City of Windsor, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 22nd day of September, 1998, in the presence of Counsel for the Society, the Solicitor being in attendance and represented by Michael E. Royce, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Gary Michael Bellman be reprimanded in Convocation and that he pay Law Society costs in the amount of $500.

DATED this 26th day of November, 1998

"G. MacKenzie"
Acting Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Stephen Harry Quist, of the Town of Kemptville, a Barrister and Solicitor(hereinafter referred to as "the Solicitor")

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 19th day of October, 1998, in the presence of Counsel for the Society, the Solicitor being in attendance and represented by Duty Counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Stephen Harry Quist be suspended for a period of two months commencing January 15, 1999.

DATED this 26th day of November, 1998

"H. Strosberg"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Peter Michael Maloney, of the City of Brampton, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 19th day of October, 1998, in the presence of Counsel for the Society, the Solicitor being in attendance and represented by William Trudell, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Peter Michael Maloney be suspended for a period of three months commencing December 24th, 1998.

CONVOCATION further orders that following his reinstatement the Solicitor remit quarterly trust comparisons to the Law Society identifying all estate matters, with accompanying trust ledgers, for a period of one year and thereafter so long as the Secretary of the Law Society has any continuing concerns; that he participate in the Practice Review Program and abide by any recommendations arising from his attendance; and, that he pay Law Society costs in the amount of $500 payable within six months.

DATED this 26th day of November, 1998

"H. Strosberg"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF James Allan Millard, of the City of Etobicoke, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee, consisting of the Reasons of the Majority dated the 13th day of August, 1998 and Dissenting Reasons dated the 25th day of September, 1998, in the presence of Counsel for the Society, the Solicitor not being in attendance and not represented by counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that James Allan Millard be given permission to resign his membership in the Society by December 31st, 1998, failing which, that he be disbarred as a barrister, that his name be struck off the Roll of Solicitors, that his membership in the said Society be cancelled and that he be prohibited from acting or practising as a barrister and solicitor and from holding himself out as a barrister and solicitor.

DATED this 26th day of November, 1998

"H. Strosberg"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Gerald Nicholas Kuzak, of the City of Windsor, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 15th day of October, 1998, in the presence of Counsel for the Society, the Solicitor being in attendance though not represented by counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Gerald Nicholas Kuzak be reprimanded in Convocation, that he pay Law Society costs in the amount of $1500, and that he participate in the Practice Review Program.

DATED this 26th day of November, 1998

"G. MacKenzie"
Acting Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Joseph Maciel Amorim, of the County of Portugal, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 25th day of June, 1998, in the presence of Counsel for the Society, the Solicitor not being in attendance but represented by Duty Counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Joseph Maciel Amorim be given permission to resign his membership in the Society, pursuant to his letter of November 25, 1998, and thereby be prohibited from acting or practising as a barrister and solicitor and from holding himself out as a barrister and solicitor.

DATED this 26th day of November, 1998

"H. Strosberg"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF David Walfish, of the City of Toronto, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 19th day of November, 1998, in the presence of Counsel for the Society, the Solicitor being in attendance and represented by Alan Gold, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that David Walfish be suspended for five months commencing March 15, 1999, and that he pay Law Society costs in the amount of $2,500.

DATED this 21st day of January, 1999

"H. Strosberg"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Clifford Paul Moss, of the City of Willowdale, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 13th day of August, 1998, in the presence of Counsel for the Society, the Solicitor being in attendance and represented by Duty Counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Clifford Paul Moss be suspended for six months commencing at the conclusion of his present discipline suspension.

CONVOCATION FURTHER ORDERS that a) if the Solicitor returns to the practice of law that he practise only as an employee or in association with another lawyer; and b) that he enter the Practice Review Programme on resuming practice.

DATED this 21st day of January, 1999

"H. Strosberg"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Philip Ebow Bondzi-Simpson of the Country of Ghana, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 11th day of September, 1998, in the presence of Counsel for the Society, the Solicitor not being in attendance and not represented by counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Philip Ebow Bondzi-Simpson be suspended for eighteen months commencing at the conclusion of the current administrative suspension.

DATED this 21st day of January, 1999

"H. Strosberg"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Sidney Irving Lovas, of the City of Toronto, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 25th day of June, 1998, in the presence of Counsel for the Society, the Solicitor being in attendance and represented by Edward Greenspan, Q.C. wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Sidney Irving Lovas be suspended for twelve months commencing at the conclusion of the current administrative suspension.

DATED this 21st day of January, 1999

"H. Strosberg"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF David Mark Marcovitch, of the City of Toronto, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Discipline Committee dated the 2nd day of September, 1998, in the presence of Counsel for the Society, the Solicitor being in attendance but not represented by counsel, wherein the Solicitor was found guilty of professional misconduct and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that David Mark Marcovitch be suspended for one month commencing March 25, 1999 and continuing from month to month thereafter until he produces his books and records in a form satisfactory to the Society.

CONVOCATION FURTHER ORDERS that if the Solicitor produces his books and records in a form satisfactory to the Society prior to March 25, 1999 that the Order suspending him be rescinded and that he be reprimanded in Convocation.

DATED this 28th day of January, 1999

"H. Strosberg"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Julie Evelyn Amourgis of the City of Toronto;

AND IN THE MATTER OF an Application for Readmission to the Law Society of Upper Canada

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Admissions Committee dated the 23rd day of December, 1998 in the presence of Counsel for the Society, the Applicant being in attendance and represented by William Trudell, wherein the Application for Readmission was granted and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that Julie Evelyn Amourgis be readmitted to membership in the Law Society of Upper Canada in the following terms and conditions:

1. That she be assessed by staff of the Law Society with a view to determining, in accordance with the procedures for requalification adopted by Convocation, what course(s), continuing legal education, Bar Admission or otherwise may be required to enable her to resume practice and what other steps if any she should pursue and that she not be readmitted until successfully completing any such course(s) to the satisfaction of the Director of Education of the Law Society and taking any other required steps to the satisfaction of the Secretary of the Law Society.

2. That she continue counselling sessions with Dr. Wood Hill for a period of twelve months from the date of her re-commencing practice and thereafter attend for counselling as may be required. The Law Society is to receive confirmation from Dr. Hill that the Applicant has commenced such counselling.

3. That she practice in association with Edith Blake and not change her practice location or association without the written permission of the Law Society.

4. That her practice be restricted to family law and litigation.

DATED this 21st day of January, 1999

"H. Strosberg"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

THE LAW SOCIETY OF UPPER CANADA

IN THE MATTER OF THE Law Society Act;

AND IN THE MATTER OF Stephen Lawrence Cappe, of the City of Toronto, a Barrister and Solicitor (hereinafter referred to as "the Solicitor")

ORDER

CONVOCATION of the Law Society of Upper Canada, having read the Report and Decision of the Committee of Convocation dated the 8th day of January, 1999, in the presence of Counsel for the Society, the Solicitor being in attendance but not represented by counsel, wherein the Solicitor's Application to vary an Order of Convocation was granted, and having heard counsel aforesaid;

CONVOCATION HEREBY ORDERS that its Order dated June 20, 1991 in the matter of Stephen Lawrence Cappe be varied by the deletion of conditions (a) and (d).

DATED this 21st day of January, 1999

"H. Strosberg"
Treasurer

(SEAL - The Law Society of Upper Canada)

"R. Tinsley"
Secretary

Filed

CONVOCATION ROSE AT 4:30 P.M.

Confirmed in Convocation this 30 day of April, 1999

Harvey T. Strosberg

Treasurer